(3726)

THE QUEEN

versus

PETUMBER BOSE & JOYKISSEN MOOKERJEE,

Charged with Forgery and Uttering.

COPIES OF THE OPENING ADDRESS ON BEHALF OF THE PROSECUTION; THE JOINT DEFENCE ON BEHALF OF THE PRISONERS; THE REPLY FOR THE PROSECUTION; THE FUTWA OF THE MOULAVEE, AND THE JUDGMENT OF MR. J. G. S. LILLIE, ADDITIONAL CIVIL AND SESSIONS JUDGE OF HOOGHLY, ALL FILED IN COURT.

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1861.

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WITNESSES FOR THE PROSECUTION.

1	Mohesh Chunder Nundy,	Wrote and witnessed Kallykisto's pottah.
1	Kallykisto Roy Chowdry,	Prosecutor.
1	Modoosoodun Mitter,	Mohurrir of Serampore Registry.
2	Brojonauth Bose,	Do.
3	Meglall Dhur,	One of the lessors.
23	Hurrychurn Dhur,	Father of the Dhurs.
31	Sibchurn Dhur,	A lessor.
33	Denonauth Dhur,	A lessor.
37	Ramchund Dhur,	A lessor.
41	Hurryhur Mookerjee,	Security for lessee and nephew of Joykissen.
79	Prawnkissen Chowdry,	Purchased Stamp paper for Kallykisto Roy Chowdry.
91	Beenodebeharry Sircar,	A witness to Kallykisto's pottah.
100	Obhoychurn Roy,	Do. Do.
101	Bhojohurry Mitter,	Do. Do.
105	Bhoyrubchunder Doss,	Do. Do.
108	Tarachand Koileah,	Alleges he was forced to sign Petumber's pottah.
123	Rameshur Ghose,	Do. Do.
131	Shibnauth Chatterjee,	Stamp Mohurrir.
133	Omirtolall Banerjee,	Stamp vendor.
133	Modoosoodun Ghose,	Alleges that his name and mark were put to Petumber's pottah without his consent.
138	Sreekisto Ghose,	Do. Do.
144	Gopaul Doss,	Mohurrir of Shibnauth Roy, the Vakeel.
143	Taruckenauth Chatterjee	

WITNESSES FOR THE DEFENCE.

146X150	Bhogoban Mundul, ...	Ryot of Mucklah, witnessed Petumber's pottah, and wrote signatures of Kisto Ghose and Modoosoodun Ghose, marksmen to Petumber's pottah.
160X164	Modoosoodun Ghose, ...	Marksman to Petumber's pottah.
170X171	Woodub Sirdar, ...	Nugdee of Joykissen, denies calling Rameshur and Tarachand.
173X179	Harradun Mitter, ...	Writer of Petumber's pottah and a witness.
185X190	Kisto Ghose, ...	Marksman to Petumber's pottah.
194X197	Madhub Mundul, ...	Ryot and writer of the Amalnamah.
200X203	Raghub Mundul, ...	Ryot and present at the execution of Petumber's pottah.
207X211	Issore Mundul, ...	Ryot and present at the execution of Amalnamah and pottah.
213X215	Kistochunder Sircar, ...	Gomashta of Mucklah, was present when the Amalnamah was ~~executed, denies he~~ went with Tarachand, Rameshur, Modoosoodun, and Kisto Ghose to Joykissen.
218	Hurrochunder Ghosal, ...	Speaks to Petumber's occupations.
220X221	Ramkulpo Chuckerbutty, ...	Ditto.
223	Luckhinarain Chuckerbutty, ...	Ditto.

225X228	Rajkissen Mookerjee,	... ...	Employed in Military Auditor's Office: speaks to Petumber's possession of 5 annas share.
232	Kissoree Mohun Bose,	... ...	Mohurrir in the Hooghly Collectorate, produces monthly account of stamps.
233X236	Kalachand Ghose,	... ...	Inhabitant of Mucklah, had conversation with Petumber about trading in gunny cloth.
238X240	Pooran Ghose,	... ...	Planted bamboo after Amalnamah was read.
243X244	Takoor Doss Hauttee,	... ...	Joykissen's boatman, states that he saw Doolall at Serampore.
245	Nobokisto Mookerjee,	... ...	Speaks to Kallykisto property.
246X247	Nobinchunder Banerjee,	...	Ditto Ditto.
248X254	Tarucknauth Ghose,	... ...	Petumber's Gomashta.
257X258	Lokenauth Roy,	... ...	Mooktear at Serampore Court: wrote the petition of Rameshur and Tarachand.
259X260	Denonath Sircar,	... ...	Mooktear ditto: states he saw Doolall at Serampore.
261	Shibnauth Chatterjee,	... ...	Receiver of Stamp vendor's returns.
261X264	Ramkissore Mundul,	... ...	Present when the Amalnamah and Petumber's pottah were written.
265	Gopaul Chund Bose,	... ...	Mohurrir of the Hooghly Collectorate.
265	Mr. DeCruze,	... ...	Formerly Deputy Magistrate at Serampore.
266	Writer from the Railway Office,		Speaks to Time Table.

266	Bissonauth Mookerjee, ...	Police Jemadar, despatched to Mucklah to keep the peace.
267 & 268	Mr. Ross, ...	Deputy Magistrate at Hooghly.
268 & 269	Nobokisto Roy, ...	Stamp Vendor and Joykissen's Khazanchee.
	Rajkissen Mitter, ...	Recalled for prosecution to contradict Lokenauth Roy.

ADDRESS

ON BEHALF OF THE PROSECUTION,

Filed 30th of March 1856.

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1. I HAVE the honor to appear before the Court in this case, with my friend, Mr. Goodeve, in support of the prosecution against Joykissen Mookerjee and Petumber Bose, who are charged, in the first count, with forging a certain instrument called an izarah pottah, dated the 18th day of Assar 1267; and in the second count with uttering the same, knowing it to be forged. The Bengalee date corresponds with the English one of Saturday, the 30th June 1860. The property to which this pottah purports to relate is a 5 annas 6 gundahs 2 cowries 2 kranties share of Talook Bockara *alias* Muklah, in Pergunnah Boro, described in the charge as one-third of Mucklah; and the pottah is for ten years, at a yearly rent of Rupees 902, and is alleged to have been granted by two of the shareholders in the property, Meglall Dhur and Doolall Dhur, on behalf of themselves and the other shareholders. The prosecutor, Kallykisto Roy Chowdry, holds a pottah of the same share in the property, as is purported to be granted by the impugned one, of the same date, and for the same term, at a rent of Rupees 1,025. The pottah of the prosecutor is granted by the whole body of the shareholders, one only of the body being represented by a proxy, and an infant one by his guardian; and this pottah is admitted by

the family to be a genuine instrument, the other being challenged *alike* by themselves and the prosecutor as a forged one.

2. The following are the particulars of the case:—The whole sixteen annas share of the Talook are debuttur lands, the Sebaits of which, at the date of the pottah, were the above mentioned Doolallchund Dhur and Meglallchund Dhur, and also Sibchunder Dhur, Deenonauth Dhur, Ramchunder Dhur, and Shamchurn Dhur, all brothers, and one Lokenauth Dhur, who is their cousin. Ramchund Dhur was, at the date of the neum-puttro subsequently mentioned, an infant, but had some months previously to the date of the pottah, attained his majority ; and Shamchund Dhur is still an infant, who acts by his guardian and mother, Soorjeemoney Dossee. The property devolved on the Sebaits through a maternal dissent. The father of the six brothers, one Hurrychurn Dhur, though having no interest in the property, has been accustomed to assist in the collection of the rents and the general management; but the two elder brothers, Doolallchund Dhur and Meglallchund Dhur, hold a neum-puttro, dated the 26th Poos 1266, entrusting them with the legal power of management, and authorizing them to act for their cousin, Lokenauth Dhur, who resides in Calcutta. Doolallchund Dhur was living in the earlier part of these proceedings, and has given evidence in them impeaching the impugned pottah, and in effect avowing it to be a forgery. He has, however, since died.

3. Locknauth has now surrendered his interest to the other members of the Dhur family.

4. At the date of the pottah, two-thirds of the sixteen annas share had been previously let to the prisoner Joykissen Mookerjee, in the benamee name of Sreenauth Dutt, on an izarah for 10 years, from the Bengalee year 1264, and the other one-third remained in khas with the Sebaits. No partition of the property had taken place, but the ryots paid two-thirds of the rents to Joykissen and the remaining one-third to the Sebaits. This gave Joykissen a considerable influence over the ryots, as he received from them a double share of the rents. In fact, his influence in the locality is notorious. He is a Zemindar of large wealth and great power, while the Dhur family are smaller land-owners, and occupy a comparatively inferior position. Joykissen resides at Ooterparah, in the immediate neighbourhood of Mucklah. The Dhurs live at Chinsurah, where their family house is, and they have only a Cutcherry at Mucklah mainly devoted to the business of their rent receipts.

5. Joykissen Mookerjee having obtained, under his pottah, possession of the larger share of the property, not only began to buy up the interests of the ryots in his share, but became desirous of appropriating to himself the remaining one-third share left in khas with the Dhurs. They, however, were indisposed to let the property to him, and with a view of coercing them into compliance by a course of annoyance. began to commit trespasses on the property,

particularly cutting down the trees and carrying off the bricks.

6. There resided in the same locality with Joykissen, and in the neighbourhood, of the property, a brother of Joykissen's, one Rajkissen Mookerjea, who was a person of wealth and station equal to himself, but wholly independent of him, and in fact at the time not on good terms with him; and Rajkissen had a son also living on the spot, Hurryhur Mookerjea.

7. The Sebaits finding that they were not able to protect themselves from the annoyances of a man so powerful and wealthy as Joykissen Mookerjea, applied to Hurryhur for protection, soliciting him to take from them an izarah of the one-third of the property which remained in their possession. The proposal was accepted by Hurryhur, but the prosecutor, Kallykisto Roy Chowdry, who is a connection of his by marriage, being desirous to have the pottah for himself, it was ultimately arranged that it should be granted to him, Hurryhur becoming his security. The negotiation commenced in the early part of Assar, and a few days afterwards Hurryhur and Kallykisto Chowdry proceeded to Hooghly for the purpose of having an interview on the subject of the proposed pottah with Seebnath Roy, who is the vakeel in that Court of the Dhur family. The rough draft of the pottah having been submitted to Seebnath Roy for his correction, and some alterations in the draft having been dictated by Seebnath Roy, they were made in it by one Gopal Doss, who was a writer in the office of Seebnath

Roy. The deed itself was prepared at Ooterparah, where it was engrossed on stamp paper by one Moheschunder Nundy, a servant of Hurryhur, the stamp paper having been purchased in Calcutta. One Prawukisto Chowdry, who is a family connection of Hurryhur was the person employed in carrying out the final settlement of the draft and the engrossment.

8. I must now call the particular attention of the Court to the places where the parties reside, their relative distance from each other, and the detail of the execution of Kallykisto's pottah. The house of the Dhur family is, as above mentioned, at Chinsurah, about 3 miles distant from the Hooghly Station, and which Station is distant 17 or 18 miles more from their 5 annas Cutcherry at Mucklah. The distances, it will be seen, constitute very material points in the case, and this pottah was executed about noon of the day of its date, the 18th Assar, or shortly after noon, at the residence of the Dhurs.

9. It appears by the pottah itself, as the fact was, that it was executed in person by the five brothers Doolall Dhur, Meglall Dhur, Sibchunder Dhur, Deenonath Dhur, and Ramchunder Dhur, and for the infant Shamchund by his guardian and mother, Soorjeemoney, and by Lokenauth Dhur the cousin, by Doolall Dhur, under the *neum-puttro*. The subscribing witnesses to these signatures are Moheschunder Nundy, the party by whom the pottah was engrossed,

and who is in the service of Hurryhur Mookerjea Hurrychurn Dhur, the father of the five brothers, Obhoychurn Roy, the chuprassie, Bhojohurry Mitter, Bhoyrubchurn Dass which last three are in the service of Hurryhur Mookerjea, and also the said Hurryhur Mookerjee, all inhabitants of Ooterparah, Prawnkisto Chowdry, an inhabitant of Hurripore, and Behary Sircar, an inhabitant of Ooterparah, which two last are also in the service of Hurryhur Mookerjea.

10. On the morning of the day of execution Hurryhur Mookerjea, Kallykisto Chowdry, Prawnkisto Chowdry, and Obhoychurn Roy, all four, proceeded from the station at Bally, which adjoins Ooterparah, to the station at Chandernagore by the morning train, which leaves Bally about ½ past 9 o'clock, and arrived at the residence of the Dhurs at Chinsurah, about eleven o'clock. Moheschunder Nundy, Bhojohurry Mitter, Bhoyrubchunder Doss, and Beenodebeharry Sircar, the other witnesses to the pottah, went by boat from Ooterparah, on the evening of the 17th of Assar, and arrived at Chinsurah at a very early hour of the morning of the 18th, and proceeded immediately at break of day to the residence of the Dhurs, which is on the banks of the river. Not only were the Dhurs at their house at day break of that morning, but they were also found there at 11 o'clock by the party which came by train. It is, therefore, impossible that they could have been at the Mucklah Cutcherry on that morning, it being situated upwards of 20 miles from their house; and the party who came by the boat

will distinctly prove, that they never left the house the whole of that morning.

11. I must here remark that the 17th was the festival of the Oolta-Ruth, which was celebrated at the house of the Dhur family; and this was followed by a feast given to the visitors, which was not concluded till after sunset of that day.

12. The grant of the pottah to Kallykisto was accompanied with the taking of a security bond from Hurryhur and the other usual documents, and among them, that for the registration of the pottah itself.

13. The Oolta Ruth, however, had created some confusion in the house. There was nothing to cast any doubt on the genuineness of the pottah, and no occasion for any particular haste in its registration, while the pottah being granted on a Saturday, the following Monday was the earliest possible day on which registration would have been practicable. In point of fact, accordingly, though executed on the Saturday, it was not until the following Wednesday, the 22nd day of Assar, that the pottah of the prosecutor was taken to be registered. It was taken, however, on that day to the Hooghly Registry Office, to be registered and then it was for the first time discovered that a claim was set up in the name of the prisoner Petumber Bose, under another pottah of corresponding date with the prosecutor's, being the pottah now challenged as a forgery; and which was brought to light by the presence of a party at the Hooghly Registry Office, giving notice of its existence, and

offering an objection against the registration of the prosecutor's pottah. The device, however, did not succeed, and the pottah of the prosecutor was duly registered accordingly, the registration being completed on the following day. It may be asked why Hooghly was selected as the Court of registration, instead of Serampore, the district in which this property was situated. In point of law an instrument may be registered in any Court, and that is generally selected which is nearest to the residence of the grantors. Now Hooghly is only about 3 miles distant from the house of the Dhurs, and as some of them had personally to attend the registration, it was preferred to Serampore, which was about 14 miles distant.

14. Now, according to the case made by the accused before the Magistrate, it will be found to be alleged on the part of the defence, that the pottah granted in the name of Petumber was founded on a previous amulnamah, granted to him by the Dhur family on the seventh day of the preceding Bysack, and a document importing to be an amalnamah is produced in the names of Meglall and Doolall Dhur, unattested however, by any witnesses, and unaccompanied by any security. It is almost needless to say that not only is the genuineness of this amulnamah challenged by the prosecutor, but it is alleged by the whole Dhur family to be a forgery; and although some faint attempt has been made on the part of the defence to set up a case of possession under it, I shall be able to establish to the satisfaction of the Court, that not

Petumber, or any party claiming in his name, but the Dhur family themselves, were in possession down to the date of the forged pottah itself; and I shall prove by clear evidence, that on the 27th of Joistee, which is 50 days after the alleged execution of the spurious amalnamah, the Dhur family made their Poonea, or annual Audit with the ryots; and Joistee is the month immediately preceding Assar. Now, had the amulnamah been executed 50 days before the Poonea, neither would any claimant under the pottah to Petumber Bose or the ryots have permitted the Dhur family to have made this Poonea, while on the other hand, the 27th of Joistee being 21 days only before the 18th of Assar, is no way inconsistent with the execution of the pottah on that date to my clients.

15. There is another point to which I most earnestly entreat the attention of the Court; I shall be able to prove that Petumber Bose, the izaradar of the forged pottah, has been for years a servant in the employ of Joykissen as a gomashtah at several of his mehals, though distant from Calcutta. No security whatever for the payment of the annual rents reserved by the pottah has been produced. Is it likely that the Dhur family would have let their property to an unknown man, a mere gomashta of a distant talook, and yet not have required security from him? And what can be the reason that Joykissen, the employer of this man, and who, if the tale be true, is his co-izaradar in the Muckla talook,

did not become his security, or procure security for him, unless, indeed, Joykissen dreaded an inquiry which might establish a forgery, and also connect him with it? How strangely this account of the forged case contrasts with the history of the real case; in that Joykissen shuns all connections with his benamee, Petumber Bose. In the true case Hurryhur Mookerjee is the security for his relation Kallykisto Chowdry and is a witness to the deed. The daylight of truth shines over the one, but the darkness of crime obscures the other. Now the pottah to Petumber bears date on the very day of the date of the prosecutor's pottah, and, according to the case made before the Magistrate on the part of the defence, is alleged to have been executed at the Mucklah cutcherry of the Dhurs, and at about the hour of 8 o'clock in the morning of that day; and the story told is, that the Dhurs came over from Chinsurah on the previous evening, that of the 17th, and having despatched the business of the execution of the pottah on the following morning, left Mucklah again on that same morning by ½ past 9 o'clock on their return to Chinsurah. The prosecutor's pottah is executed by the whole Dhur family; but two only of its members Meglall and Doolall, are pretended to have signed the one to Petumber, though they are said to have executed as managers under their neum-puttro. I shall prove that the Dhurs never in fact left their Chinsurah house on the 17th at all; that they were in fact, at the very time assigned for the execution of the pottah to Petumber, not at Mucklah, but at Chinsurah;

and it is obvious from the distance alone, that parties shown to have been engaged at noon of that day in the granting of a pottah at Chinsurah, could not have been occupied at 8 in the morning of the same day in granting one at Mucklah: it would be a physical impossibility.

16. The residence of the Dhurs being at Chinsurah at the time, will, I anticipate, be established beyond all question.

17. The prosecutor's pottah, as it has been noticed, was executed by the entire Dhur family, with the exception only of one member, who, being in Calcutta, it was executed on his behalf by his cousin. The pottah granted to Petumber purports, only to be taken in the name of the two managers. When parties set to work to commit forgeries, they would particularly be careful to introduce upon the scene the least possible number of actors capable of giving an apparent legal effect to the document which was being forged.

18. Mark the contrast in the case of the genuine pottah. The whole family, with the exception of the absent one, and that a family composed of several individuals, join in the act. Not *two*, but *seven* individuals, take on themselves the burthen of proving the genuineness of the document, and if false, expose themselves to the penalties of its forgery. Yet according to the theory of the defence, (indeed, consistently it must be admitted with the neum-puttro itself,) the signatures not of *seven*, but of *two* only were needed to give the document, if genuine, a legal validity.

19. The pottah to Petumber purports to be attested by six witnesses, and six only, namely, Harradhone Mitter, Tarachand Koela, Bugghoban Chunder Mundul, Sreekisto Ghose, Modoosoodun Ghose, Hurrychurn Dhur, and Ram Issur Ghose.

20. Harradun Mitter is described in the pottah as a kaist, and as its writer. Beyond this the prosecutor has as yet been unable to trace him further, than that he is believed to be a creature of Joykissen. The proceedings, however, before the Magistrate in point of form associated him as an assamee, which may account for his not having as yet been produced as a witness.

21. Hurrychurn Dhur is the father of the members of the Dhur family, already alluded to. He ignores the whole transaction, and avows the signature ascribed to him to be a forgery.

22. Of the remaining five witnesses, four of them, *viz.*, Tarachand Koela, Sreekisto Ghose, Modoosoodun Ghose, and Ram Issur Ghose, all declare in effect the pottah to be a forgery, and that, neither of the two Dhurs, who are represented as the grantors in it, were present on the occasion of its execution.

23. These witnesses are all persons of small position, ryots of Ooterparah, and either those of Joykissen or were at the time his dependants. The place assigned by four of them as that in which this document was concocted was the house of Joykissen, at Ooterparah, and their common representation with the

requisite variations as to the differing circumstances applicable to each is, that they were fetched to the house by Joykissen's people, nay to the very presence of Joykissen, and to the room in which the forgery of the document was going forward ; and that they were then coerced by Joykissen himself into either signing their names as witnesses, or as to those who could not write themselves, allowing their names to be subscribed on their behalf and which was done by Bugghoban Chunder Mundel the remaining witness.

24. Bugghoban Chunder Mundel is a mohurrir in the service of Joykissen.

25. As respects the two witnesses Sreekisto Ghose and Modoosoodun Ghose, an attempt was made before the Magistrate, and may be repeated again on the present occasion, to get rid of the effect of their testimony by the production of two other witnesses of the same name, who represented that it was they, and not the parties whose testimony had been previously taken, who were the real witnesses to the pottah, and that the pottah had in fact been executed in their presence by the Dhurs. This attempt, however, at a personation signally broke down. The attestations of both the personators, that is to say their names, respectively, was represented to have been written not by themselves, but by Bugghoban Chunder Mundel, and for the very reason as they represented, that they could not write. There was produced, however, to the Court, in contradiction of this statement, (as will be again, should the attempt be repeated,) the proceedings

in certain causes, in which it being then the interest of these two several parties to make out that they could write, they have averred on oath the fact that they could. Even on the supposition that they, and not the parties whom the prosecutor represented, were in truth the witnesses, such a contradiction would of course be an obvious annihilation of their whole testimony.

26. In the course of the proceedings, however, before the Magistrate one very singular, though on the part of the defence, unforeseen, and unfortunate piece of evidence transpired to connect the real Ramessur Ghose with the attestation of the pottah, and to show that the individual of that name brought forward by the prosecutor and not the one introduced by the defence, was the real party. One Rajkissen Mookerjee, a party called on behalf of the defence, and who was the landlord of the real Ramessur, deposed that he had held various conversations with Ramissur on the very subject of the attestation; that he (Ramessur) was a witness to the pottah; and that his petition to the Magistrate, presently referred to, and mentioned in the Roobokarry, had been got up at the instance of, and its expense paid for by, Rajkissen. The latter fact, he, on being recalled, denied, and the point was an immaterial one. At whosever instance the petition was presented the evidence of the defence obviously established the fact that the Ramessur produced by the prosecutor was the real witness, and that Ramessur produced on the part of the defence a sham and a purjured and suborned one.

27. The coercion to the attestation practised on the two witnesses, Tarachund Koila and Ramessur Ghose, was continued by their being despatched, on the Monday following the Saturday, the date of the pottah, to the Serampore Registry Office, under charge of the servants of Joykissen, with a view to the registration of the pottah to Petumber; and corresponding names are stated to appear on the registry as witnesses. These two parties, however, seem to have taken alarm at the formal registration of a forged document, and the consequences which might attach to themselves as the result of their taking part in the registry; and they protested against being made to go into the Office. It will be shown in point of fact, that they did not enter it, and if names corresponding to theirs appear on the registry, then the two individuals must have been personated by other parties.

28. The only other individual appearing by the note of the Registrar endorsed on the pottah as taking part in the registration was one Moheschunder Chuckerbutty, described in the Registrar's note as a Mooktear on behalf of the Dhurs. The Dhurs not only ignore the alleged mooktearship, but disclaim all knowledge of any such party.

29. He was, in fact, as the evidence will show, only a tool of Joykissen, and employed by him to effect this registration, and with the sanction of Petumber, so far as he had in fact any real concern in the matter.

30. Tarachand Koila, Ramessur Ghose, and Kistochunder Ghose, appear all three to have very soon

become alarmed at having allowed themselves to be dragged into the concoction of the specious pottah, and being apprehensive that they might be coerced by the oppression of Joykissen into giving false evidence, they all three shortly after the date of the transaction, presented petitions to the Joint Magistrate of Serampore for protection setting forth, the circumstances under which their names had been affixed to the pottah.

31. Some question has been raised as to whether the expenses of these petitions were paid by themselves. They state that they were; but the point is not very material, for by whomsoever paid for, there are the petitions on the files of the Court to speak for themselves. Had they not in truth been the real witnesses, but the personators, as set up by the defence, it is not very likely that they would have troubled themselves to have presented any such petitions at all.

32. It is obvious from these petitions, that by whomsoever promoted, the witnesses did not shrink from themselves provoking a magisterial investigation into the facts.

33. But the petition of the witnesses was not the only challenge of judicial enquiry which has been set on foot by those asserting the validity of the prosecutor's pottah. About the same time, or very shortly afterwards, a petition was presented to the Magistrate by the prosecutor himself, bringing the fact of the forgery of the cotemporaneous pottah to the notice of the Court, and challenging an investigation.

34. It is not the authors of deeds of darkness who are the first to bring them to the light of judicial inquiry, unless indeed, as in the case of the witnesses, when the object was to avoid oppression and still greater penalties.

35. From the depositions already taken on behalf of the defence, it is represented that other documents in the nature of kubooleuts, zaminamahs, and so forth were prepared cotemporaneously with the false pottah, and the whole documents appear to have been not less in number than 8; and all (pottah included) said to have been prepared and the execution completed by 8 o'clock in the morning of the same day. Now it is a pure absurdity to imagine that all this amount of business and of writing could have been transacted in so short a space of time. Moreover, the stamp on which the pottah was engrossed appears on its face to have been purchased at Ooterparah on the very day of the date of the pottah, Ooterparah being a mile or two distant from the Mucklah cutcherry of the Dhurs, at which the pottah is represented to have been executed. Where, according to the usual course of business, is the stamp vendor to be found whose office would be open at an hour of the morning so early as to allow of its being purchased and brought from such a distance within such a time ?

36. Whenever and to whomsoever the stamp may in fact have been sold, there is one clue to the whole transaction of the stamp, and that is, that the stamp vendor of Ooterparah is one Nobokissen Roy, that he

is a connection of Joykissen, and that his residence and the place of sale for his stamps is Joykissen's own house at Ooterparah.

37. I should, however, observe here in passing that the stamp appears to have been purchased not for a pottah, but for a bond.

38. Among all the various documents there represented as having been manufactured cotemporaneously with the fabrication of the pottah, it is a circumstance not to be overlooked, that no kuboolyut to the Dhurs, or any instrument of security to them for their alleged rent, has hitherto turned up.

39. With a view of giving some color to the story of this fabricated pottah, an attempt may possibly be made, as in fact has already been done, to represent Petumber, or those claiming under the pottah, to have had in fact possession under it. Indeed, as pointed out above, notwithstanding the broad fact staring them in the face, of the pooneah having been held by the Dhurs so late as the 27th of the previous Joisty, the possession has even been asserted for a still earlier period than the pottah itself. The alleged possession does not, however, go the length of a possession of the whole property, but only either of collections from individual ryots or the submission of individual ryots to proceedings instituted against them under color of the pottah. Even were a possession much more extensive than alleged, in fact established, it would not be very important, since every one conversant with the nature of Mofussil

proceedings must be aware, that acts of possession of this nature are but the first steps taken in enforcement of a fraudulent title: and of course none would take the trouble, and incur the hazard of forging a pottah, were it not intended to exercise ownership under it. In point of fact, however, even if occasional acts of possession of this nature should be shown to have been had under the false pottah, the substantial possession has passed to the prosecutor under the pottah granted to him. Though these alleged acts of ownership under the impugned pottah fail to establish its own validity, they connect the parties exercising them with the pottah itself, and tend to establish against them both the original act of forgery and the subsequent uttering; and to the prisoners alone, or to one of them, are these acts of ownership ascribed.

40. Under the circumstances above detailed, can there be any rational doubt that both the prisoners are alike guilty of the whole charge preferred against them, that is on both of the counts ?

41. The course of defence hitherto taken has been simply to assign the whole transaction and the whole interest in the pottah to Petumber, and on his own account; and there has been no question raised as to the fact, at all events, of uttering. Indeed the case made by the defence has been, that the pottah was treated as a genuine document, and it is openly avowed to have been acted upon.

42. In this view, thus advanced by the defence itself, the question practically resolves itself into the

single one of whether a forgery has been committed, and if so, by whom ? and whether either a participation in or knowledge of it is to be ascribed to the prisoners ? Now it is as impossible that two bodies can occupy the same space, as that both the pottah granted to the prosecutor and that set up in the name of Petumber can be alike genuine. It would be therefore absurd to adopt the supposition, that both may in fact have been executed by the Dhurs, and that such a fraud was practiced on each party claiming under their respective pottahs. Time, place, and, distance, apart from all other circumstances, all preclude this supposition. The Court then, I apprehend, will feel itself forced into the conclusion that one of the two pottahs must have been forged; and the only question will then be, which of them is forged ? I submit that the circumstances leave no escape from the conclusion that the pottah of the prosecutor is the genuine one,—that insisted on by the defence the forged one

43. Then, if there be a forgery, who are the forgers?

44. Now, even the case for the defence represents Petumber at all events as personally present and taking part in the preparation of the document, and as engaged in its subsequent uttering. But is the case less pointed as against Joykissen ? If the evidence of the attesting witnesses is, as I insist that it ought to be, credited, and they adhere, as it may be presumed they will, to their original accounts, Joykissen was as much, nay a more, active party in the

concoction of the original forgery itself than even Petumber. Let the Court accordingly but give credence to the testimony of these witnesses, and the case need be carried no further. Even the forgery will already have been proved against Joykissen.

45. But supposing there was any reluctance on the part of the Court to decide the case on the testimony of these witnesses alone, how is it affected by the general circumstances? These, I submit, abundantly establish not only the complicity of Joykissen, both in the forgery and the uttering, but the still broader fact, that it was for his purposes in truth that the pottah was fabricated, and the name of Petumber only made use of as a cover behind which to screen himself and to shelter his own misdeeds.

46. I regret to have to use harsh expressions towards one to whom it is known I have on former occasions stood in a different position, but I have a duty to perform, from which I dare not shrink ; and when I couple the word fabrication with the acts of an individual who has filled a station of wealth and influence in the locality to which this prosecution relates, it is but just to the cause to which my advocacy is due to observe, that so far from wealth and station carrying with them any weight against the probability of such a fabrication, experience has but too truly shown, that in these Mofussil cases it often happens that it is in the exemption from consequences which the possession of power carries with it, that offences of this nature are but too often committed;

and it is the expectation that this very power will carry a fraudulent transaction through, which is one of the inducements to it.

47. Can it be conceived for a moment that a pottah was *bonâ fide* sought for by Petumber or only on his account?

48. Petumber was a resident at a distant locality, and his position in life was not one to warrant his engaging in such transactions, nor to lead him to them; and down to about the very time the pottah was granted, he was in the active employment of another party, as a gomashtah, at a distance of about 24 miles from the spot. Petumber did not turn up at all at Mucklah, until about the time the pottah under which his claim is preferred is alleged to have been granted; and where will he then be shown to be found? Not at any lodgings of his own, or any independent place of abode, but at the house of Joykissen.

49. All this too, it will be remembered, (the false amalnamah being displaced,) without the shadow of a proof of any previous consent or communications with the owners of the property, the alleged grantors of the pottah, the Dhur family.

50. What on the other hand was the position of Joykissen? He had already the lion's share of the property: he coveted that of the lamb. He had been unable to obtain it by fair means. His only resource was to seek it by foul. His wealth and position placed at his control creatures ready to

do his bidding. All the witnesses hitherto adduced on the part of the defence have been his creatures, or connected with him.

51. This only indicates the probabilities of the case. But in fact I shall lay before the Court evidence which renders it less necessary to discuss the question of such probabilities as these.

52. The stamp itself on which the pottah was engrossed was procured from a dependent of his on the premises of Joykissen. The pottah was at all events prepared in his house. The only attesting witness to it who has hitherto alleged its validity is his own mohurrir. Joykissen has avowed to others the ownership of the pottah, representing it as having been taken benamee for himself; nay, he has even gone the length of exercising acts of ownership under it, applying to the ryots for payment of their rents, receiving payment from them, and taking kuboolyuts from them on the footing of his title as izaradar under the pottah. If these facts are proved, the guilt of Joykissen is established.

53. Such is the general outline of this case. The depositions already taken on each side prevent the parties, as well on the one side as on the other, from shifting its general bearings, from varying the issues already in the preliminary stage of the prosecution presented to the Court, and that on which it is ultimately to be decided; and I have every reason to anticipate that the evidence I shall produce on the part of the prosecution will largely strengthen the view which

dictated to the Magistrate the committal of the case for trial ; and if any thing were wanting at that time to have justified a conviction on the evidence then before the Court, the additional proof I shall be in a position to adduce will, I expect, place the guilt of both prisoners beyond all possible question.

54. Sir, with these observations in your hands I leave the case, proceeding at once to call the witnesses to the proof of the case I have thus taken on myself.

DEFENCE.

THE mass of directly conflicting testimony presented to the Court in this case is so great, and the consequent existence of fraud and perjury in no common amount on the one side or the other so certain, that it becomes more than ordinarily necessary to examine carefully into the nature of the case, the relations and motives of the actors therein, and the probabilities of truth on either side, before proceeding to weigh the actual evidence given in the cause.

Looking, then, to the nature of the case, the Court will at once detect the true features of the prosecution behind the mask which has been assumed. The prosecutor is introduced as the poor izardar, praying the aid of justice to protect him against his powerful neighbour, who is seeking to deprive him of his petty profit of Rupees 100 a year. In his deposition before the Magistrate Hurryhur Mookerjee states—"On my consenting to take the izarah, Kallykisto Roy, a relation of mine, who lives in my house, said to me, that he would feel highly obliged if I would procure this izarah for him, *as it would put him in the way of gaining a livelihood;* upon which I promised to procure the izarah for him." And Kallykisto on the same occasion described himself as living at Ooterparah, as a broker to the Calcutta market, and stated that he asked Hurry Baboo

to let him have the izarah *as it was an inconsiderable one.*" Yet it is now avowed that the cost of the proceedings before the Magistrate amounted to Rupees 4,000 or 4,500, and that this cause has been proceeding before this Court now for nearly three weeks, at a cost of from Rupees 1,150 to 1,200 per day to the prosecution. It would be an insult to common sense to suppose that this vast expenditure is being incurred for the protection of a petty izarah. Had that been the object in view, proceedings in a civil suit would have been first resorted to; the only fair way in which the merits of the rival pottahs could have been tested, and the only way in which a *bonâ fide* litigant would in the first instance have tried them. No—all that wealth can afford or influence procure is being lavishly expended to gain no less an end than the ruin of a brother hated by his brother, of an uncle hated by his nephew. A slight reference to the facts in the case will suffice to convince the Court of this. Kallykisto, the prosecutor, is a mere puppet. No consistent or credible account is given of his occupation or means of livelihood. Before the Magistrate he described himself as a broker to the Calcutta market. When cross-examined in this Court, he acknowledged that *he had not acted as a broker for the last* 4 *or* 5 *years.* He stated that, after ceasing to be a broker, he had carried on a trade in rice until it became unprofitable. Since that he had lived at Ooterparah, now and then going to Calcutta to pick up a bargain, but in the main subsisting on his savings, those savings

consisting of Rupees 16,000 or 16,500 once placed in the hands of a mahajun, since deceased, but latterly kept by the prosecutor at his lodging in cash and notes—for how long he cant exactly say—but for about 2 years! Hurryhur Mookerjee described him as a dealer in cloth, but no mention of such dealings was made by the prosecutor himself. Moreover, if additional evidence be required to show that Kallykisto is a mere man of straw and utterly unable to provide the costs of this prosecution, we have examined witnesses resident in the village where Kallykisto was born, who depose to his being a man of no substance, residing, as he has himself acknowledged that he does, in a mud hut, and possessing no property in that neighbourhood, but a share in some land which yields him about Rupees 16 or 17 a year. The prosecutor, when before the Magistrate, could not recollect what was the amount of annual collections shown by the papers by calculations from which the amount of jumma of his own izarah had been fixed. He said in this Court that he had once been to Mucklah, to be introduced to the ryots, *but had never been near the place since.* We feel confident that the Court wholly discredits his assertion that he is personally interested in the izarah, or that he is conducting this prosecution with his own funds, assisted by occasional loans which he pays off, and will unhesitatingly pronounce him to be nothing more than a mere tool—*Whose* tool admits of no doubt. It is asserted that he is a relative of Hurryhur Mookerjee;

who did not hesitate at first to say that he (Hurryhur) had married the daughter of Kallykisto's father's sister. When the witness was pressed as to the names of Kallykisto's father, and of the father of his own wife, the alleged cousinship dwindled down to the fact that Kallykisto called the witness's father-in-law "pisa," a term not indicative at all of relationship in the male line. Kallykisto himself was utterly unable, when pressed in cross-examination, to define the degree of relationship between himself and Hurryhur; still its assertion connects Kallykisto with Hurryhur. The case for the prosecution, in fact, admits that Hurryhur Mookerjee was the person whom the Dhurs sought as their patron. The Dhurs, in their petition of the 9th of July, directly asserted the fact that the izarah was granted to Kallykisto *benamee for Hurryhur;* and, though they now swear to the contrary, can only explain away the assertion in their petition by pretending that they were ignorant of its contents. Hurryhur, according to the story for the prosecution, settled the amount of the jumma with the Dhurs; travelled up to Chinsurah to Sibnauth's lodgings for that purpose; again went up to Chinsurah to attest the izarah and become security for Kallykisto; again went up to Hooghly to be present at the registration of the deed, though he took no part in the registration; and all this though he is a Brahmin and a man of considerable wealth, the Dhurs' bunneahs, and subsisting on Rupees 600 a year, the surplus of the proceeds of the dewutter land of Mucklah after

providing for the services of the idol. Hurryhur again, when it becomes desirable for the purposes of this prosecution to obtain influence in Mucklah and to bribe the Dhurs, takes a putnee of the Mucklah Talook at an extravagant price and jumma. Hurryhur's connection with the case from the outset is, therefore, beyond all manner of doubt—Nor is his father's complicity in the proceedings for the prosecution much less certain. Hurryhur and Rajkissen live together in the same house, joint in food; and although Hurryhur has some separate property, he manages all his father's affairs. In this house Kallykisto was, (according to the statement of Hurryhur first made both before the Magistrate and in this Court, though he afterwards recalled that statement,) living at the time when the izarah was granted. In a case, about 15 months ago before the Deputy Magistrate of Serampore, in which Rajkissen was prosecutor, Kallykisto described himself as being a sircar in the employ of Rajkissen. Rajkissen, in a petition filed in the same case, described Kallykisto as being his servant. Hurryhur and Kallykisto both say, that Rajkissen is lending funds for the conduct of the prosecution. The prosecution both in this Court and before the Magistrate has been conducted by Mr. Kiernander, a person in the regular employ of Rajkissen on a monthly salary, and by 3 or more of the am-mooktears in Rajkissen's service. Prawnkisto Chowdry, who lives in the house as a relation of Rajkissen, is represented to have been active in the preparation of the pottah, and the attesting witnesses

to its execution are a boat-load of family servants, despatched from Ooterparah to Chinsurah on that service. All this proves incontestibly that, although Hurryhur has the hardihood to deny the fact upon oath, and Rajkissen, although subpœnaed for the defence, declines to appear, excusing himself by a medical certificate, Rajkissen and Hurryhur Mookerjee, the younger brother and nephew of our client, Joykissen Mookerjee, were the persons who got up the pottah taken in the name of Kallykisto, and are virtually the prosecutors in this case.

It may be a question, according to decided cases, and in duty to our clients we submit it as a point for the consideration of the Court, whether, if the Court be of opinion on the evidence, (as we contend it must be,) that the ostensible prosecutor has no real interest in the case, and no actual rights to protect, the prosecution must not on that ground alone be dismissed.

But to resume our consideration of the hearings of the case.

The inveterate hostility of Rajkissen Mookerjee and his son Hurryhur against our client Joykissen Mookerjee is so notorious, that the Court might almost take judicial cognizance of its existence. It may, however, be as well to enumerate some instances in which this feeling has come into active operation in attempts to harass and ruin our client.

It has been admitted by Hurryhur Mookerjee, in his evidence given on this trial, that about 15 months

ago a charge was brought against Joykissen Mookerjee of having attacked the house of Rajkissen Mookerjee in open day with a large band of lattials and spearmen—himself in person urging on his forces. The charge was dismissed.

We have filed authenticated copies of documents, (a more detailed list of which is given in an appendix to this defence,) which show that in October 1859 Rajkissen made a charge against Joykissen Mookerjee of having attacked his carriage with the object of murdering his son Hurryhur ; that the assault was made on the public road in open day by 200 lattials and spearmen, and that Joykissen in person from his carriage directed this attack. Depositions were given in the case by witnesses professing to have been present, and to have seen Joykissen directing the assault. The case was investigated by the Deputy Magistrate, and found to be false.

We have filed authentic copies of a deposition of Rajkissen Mookerjee, given in the case of Bemollah Dabee, on the 16th August 1859, in which he imputes forgery to Joykissen Mookerjee, and of the roobocarry of the Judge of Hooghly, in which he expresses his utter disbelief of the calumny, and dismissed the case with a rebuke to Rajkissen.

We have filed authentic copies of 6 decisions of the Sudder Ameen of Hooghly, (Nos. 26, 27, 56, 65, 197, and 196,) in a case of *Rajkissen Mookerjee vs. Joykissen Mookerjee*, dated 15th January

1861, which show that evidence was produced by Rajkissen to prove that Joykissen had obtained the execution of deeds of sale of the property in dispute by compulsion. The Sudder Ameen dismissed the cases, recording an opinion that they had been. got up through enmity. The deponents have been summoned by the Ameen to the charge of perjury and contradiction in their statements.

We have filed an authentic copy of a petition filed by Hurryhur Mookerjee before the Collector of Hooghly, dated the 4th of August 1857, in which he charges Joykissen Mookerjee with exacting a deed of partition from Rajkissen under threats of taking his life. We have filed also copy of a subsequent petition presented by Rajkissen to the same authority, disclaiming the charge, and excusing its having been made on the plea that it was made by his mooktear without his authority.

We have filed a copy of another petition of Hurryhur Mookerjee, filed before the Deputy Magistrate of Serampore on the 10th August 1857, containing all sorts of imputations, from attempted murder to common assault, upon Joykissen's character; and of a subsequent petition of Rajkissen Mookerjee, disclaiming the charges as having been made by the mooktear without authority.

We have filed official copies of other decisions and reports, detailed in the appendix above noticed, which show that in other instances charges of heinous

offences (in one instance even of being the instigator of dacoity) have been brought against Joykissen and his amlahs, and that the local authorities attributed their having been brought to the machinations of Rajkissen Mookerjee. This hostility accounts for the enormous acknowledged and still more enormous actual expenditure which is being incurred to secure a conviction, and will doubtless rouse the Court to a most vigilant suspicion in dealing with this most unnatural prosecution.

That this case was from the very outset launched against Joykissen Mookerjee, although he was not actually made a defendant until a later period, will be manifest from a perusal of the proceedings.

On the 22nd of Assar, or 4th July, Kallykisto's pottah was presented for registration at Hooghly on which occasion the registration was opposed by a mooktear on the part of Petumber Bose. On the 9th of July a petition was presented by Hurrychurn Dhur, Doolall Dhur, and Meglall Dhur, first to the Judge of Hooghly and afterward, to the Magistrate of Serampore, in which they state that "on the day of registration Joykissen Mookerjee, through his servant, filed a petition, stating that he had given him (the servant) the izarah of the one-third share Mucklah." In the same petition Meglall tells the story about Joykissen having seized on him at the Hooghly "Railway Station with the desire of taking me to his house and fulfiling his purposes by fraud;" and the petition concludes thus "Baboo

Joykissen is a rich man and a notorious forger, and we are very much afraid of losing our property. For these reasons we petition your Worship, and pray that justice may be granted us by punishing Joykissen Mookerjee for preparing the forged deed and for getting it registered in the Register's Office at Serampore; as well as his servant, for assisting him in committing this forgery."

On the 13th of July the *Izahar* of Meglall Dhur was taken. In this he states—"I am giving this izarah for fear of any injury being done to my rights in future, besides which I am not desirous of prosecuting the defendant for forgery. My desire is to guard my own rights. It depends upon the wish of the Court to try the question of forgery or not, but I have nothing to do with it." Doubtless the putting foward the Dhurs in the first instance as complainants was with a view to screen the real actors. A desire is also apparent, by the petition being presented to the Judge in the first instance and from the wording of the izarah just quoted, to give the case the semblance of honesty by inducing *the Court* to direct a prosecution in order that the accusers might not seem to act spontaneously. The Magistrate seems to have been slow to act on the hint. Accordingly on the 14th of July petitions were filed in the names of Rameshur Ghose, Tarachund Koileah and Kisto Ghose, in substance directly accusing Joykissen Mookerjee of forgery, but still bringing no formal charge against him. The Magistrate still taking no steps of his own

accord, it became necessary on the 23rd of July to bring forward Kallykisto as prosecutor. Still however the cunning design of leaving it to the Court to make Joykissen Mookerjee a defendant was adhered to; and in Kallykisto's petition Petumber Bose, Haradhon Mitter, Tarchund Koileah, Bhogoban Mundul, Sreekisto Ghose, Modoosudun Ghose and Rameshur Ghose were alone named as defendants, no mention being made of Joykissen. It was doubtless thought that the petitions on the file of the Dhurs and of Rameshur Ghose, Tarachund Koileah, and Kisto Ghose would be quite sufficient to insure the implication of Joykissen if the case were once taken up by the Magistrate. The Magistrate however looked upon the case with distrust, believing from the first that the Dhurs had actually granted pottahs first to Petumber Bose and afterwards to the prosecutor, and he accordingly, on the 9th of November, recorded a proceeding by which, without finally disposing of the case, he stated—" While therefore on the present evidence no steps can be taken against any one, the order which I shall pass shall contemplate the re-opening of the case should fresh evidence be obtained. Let the papers in this case be filed in the Office."

The case was shelved. This would not do at all—So a miscellaneous appeal was made to the Judge of Hooghly, who, on the 21st of January last, remanded the case to the Magistrate to be finally disposed of.

It was now perceived that it would not answer to coquette with the case any longer. Decisive proceed-

ings must be taken against Joykissen. Learned Counsel was accordingly brought up from Calcutta; and Rameshur Ghose, Tarachand Koileah, Kisto Ghose and Modoosudun Ghose were on the 9th and 10th of February released from the position of defendants and gave their depositions directly in criminating Joykissen Mookerjee who was on the following day formally charged as a defendant.

Having thus shown that the prosecution has its origin in a family feud, and that its object is not the furtherance of justice, but the crushing of a detested relative, we proceed to enquire into its merits.

Before handling the direct evidence, it will be well to consider what are the broad probabilities of the case on either side as respects the truth of the rival pottahs.

We think it may be assumed as self evident, that the existence of one pottah and the knowledge of that existence must have led to the fabrication of the other. It is beyond the bounds of probability to conjecture that, by some extraordinary coincidence, the execution of one pottah and the forgery of its rival should have been going on at one and the same time at two places at a distance of 20 miles from each other.

Now, the existence of Petumber's pottah on or before the 20th of Assur is an established fact. It was registered on that date. Suppose then that the fact of its registration became on that or the next day

known to Rajkissen and Hurryhur Mookerjee, who have always Mooktears about the local registry offices, it is not difficult to suppose that they may have conceived and carried out the design of inducing the Dhurs between that date and the 22nd (the earliest date of the undoubted existence of Kallykisto's pottah) to execute an izarah to Kallykisto. The inducement offered is the increased jummah of Rupees 1,025 in place of Rupees 902 (with what further bribe we know not.) The risk is small. No forgery has to be resorted to, for there are the Dhurs themselves to execute. The number of parties executing will in itself afford a strong body of testimony in support of the deed; the witnesses are all staunch men and true, being retainers of Rajkissen and Hurryhur. The evidence will be easy, for the only false fact to be sworn to will be a date. And the arrival of the different batches of witnesses may be so timed, that the same evidence which supports the new izarah will appear to be convincing proof of the falsity of the one already given to Petumber. The whole scheme is easy and feasible.

On the other hand, it is wholly incredible that Joykissen or Petumber Bose, if they had happened to gain information (and how they should have done so is not suggested) of the actual execution of the pottah to Kallykisto on the 18th, and had conceived the design of forging one to set up in opposition to it should have forged one at the *lower* rent of Rupees 902 instead of Rupees 1,025, thus making sure enlisting

the Dhurs as witnesses against them, by making it against their interest to support the forged pottah. To induce a man to repudiate his real deed by making it his interest to do so is a thing of no very uncommon occurrence in this country; to endeavour to make him adopt a forged deed by rendering it pecuniarily disadvantageous to him so to do would be the conception of a madman.

Again, the mode of selection of the witnesses to either pottah is not without much significance. A false date only is the thing to establish on the part of the supporters of Kallykisto's pottah; yet a numerous body of witnesses whose evidence can be depended on, being servants of the Mookerjees, (for such they are acknowledged to be in the written statement for the prosecution) and most of whom admitted in cross-examination that they had given evidence in many previous cases, is taken up a distance of 20 miles, and *not a single independent witness is called in to attest.* On the other hand a forgery (according to the case made for the prosecution) has to be supported ; yet so little care is taken to provide witnesses on whose evidence dependance can be placed that within a fortnight's time 3 of them and at later period a fourth—according to the prosecutor's case, and according to our own case two of them—turn approvers, and one of them, Hurrychurn Dhur, is unnecessarily introduced as a witness, as if with the special object of securing additional evidence against the forgers.

An endeavour has been made to throw discredit upon Petumber's pottah by pointing out two defects in the execution.

The first is that Lokenauth Dhur is not made an executing party, although he had a share in the 5 annas share of Mucklah.

We have however proved a pedigree (annexed to this defence) by which it will be perceived that by the deaths of Bhonamutty Dassee and Luckhemony Dassee, who are both admitted to have died before the date of the izarah of the 10 annas share of Mucklah granted to Sreenauth Dutt, Loknauth Dhur and Kissorelall Dhur, equally with Meglall and his brothers, succeeded to the 5 annas shares of Bhonamutty and Luckhemony respectively, which together made up the 10 annas share which was granted in izarah to Sreenauth. The same is admitted in the petition filed by the Dhurs on the 9th of July in which they state;—"The two-third share of the property belonging to our maternal grand-uncles being decreed to the *eight* grandsons of our maternal grandfather, &c." Now the izarah granted to Sreenauth Dutt has been filed on the part of the defence and proved by Meglall and Hurrychurn Dhur, and it will be found by reference to it, *that Lokenauth Dhur is not there made an executing party, though having a share.* In fact the introduction of Lokenauth Dhur's name into the izarah granted to Kallykisto is a circumstance which tends to throw suspicion on the case for the prosecution. His name had not been used in any

previous or subsequent deed conveying interests in the Mucklah property. It does not appear in the putnee granted to Hurryhur Mookerjee.—It being alleged, but not proved, that Lokenauth had previously to the execution of the putnee abandoned his interest in the mehal. It may be supposed that his name was introduced into the pottah to Kallykisto *for the first and only time* on purpose to found a pretext for the supposed defect in Petumber's pottah. Indeed the mode of execution of Kallykisto's pottah is altogether such as to occasion suspicion of its good faith. It is admitted in the written case for the prosecution that consistently with the neyum-puttro the signatures of 2 only of the Dhurs were needed to give the pottah legal validity. Why then multiply signatures, except for the purpose of multiplying evidence in support of a document which it was known would be impeached ? Why execute partly according to the neyum-puttro and partly independently of it, thus casting doubts upon its authority?

The second defect pointed out in the execution of Petumber's pottah is, that it is signed by Meglall and Dolall in the name of "Soorjoomony Dossee, mother and executrix on the part of Ramchunder Dhur and Shamchund Dhur, *infants.*"

Now, it is asserted that Ramchunder Dhur had attained his majority before the date of the pottah; and as Meglall and Dolall must have been aware of this, they would not have so executed the pottah.

To this it may be replied—1st. That it would be unsafe to rely upon the majority of Ramchunder before the date of the pottah as a fact established in evidence. Ramchunder himself was *the only* witness called to speak to the fact. He said that he was at the time of giving his evidence 19 or 20 ; but he was unable or unwilling to state the month of his birth. His appearance was not at all inconsistent with the supposition that in July last he may not have been quite eighteen ; and he has given evidence as to his own age which contradicts the statement in the written case for the prosecution, *viz.*, that "Ramchunder Dhur was *at the date of the neyum-puttro*, or deed of management subsequently mentioned, an infant, though he had some months previously to the date of the pottah attained his majority." The witness himself said that he had attained his full age one year *before* the neyum-puttro. This shows how inaccurate the statements of the witness as to his own age were.

2ndly.—It is by no means improbable that, if Ramchunder Dhur had attained his full age only shortly before the execution of the pottah to Petumber, Meglall and Doolall might purposely misrepresent the fact in order to enable Ramchunder to extort something in consideration of his confirming the pottah after he should attain his pretended majority. The Dhurs have shown themselves not above such a trick ; having granted a putnee of the whole talook of Mucklah to Hurryhur Mookerjee, not mentioning

the outstanding share of Kissorelall Dhur, for a putnee. of which share a bonus of 900 Rupees had to be paid subsequently by Kallykisto, doubtless benamee for Hurryhur Mookerjee.

While upon the probabilities of the case, we must not omit to notice the gross improbabilities of the conduct ascribed by the prosecution to our client, Joykissen Mookerjee.

Joykissen is well known as a man of no ordinary ability, by whose exertions the family rent roll has been increased from originally small dimensions until it includes well nigh one quarter of the zillah of Hooghly: yet this shrewd, experienced and wealthy man is alleged, for the sake of an izarah of 10 years' duration, yielding an annual profit of about 100 Rupees, to have exposed himself to the penalties of forgery, and to have committed that forgery in Ooterparah, where he is surrounded by deadly enemies, with no precautions taken for concealment, (one witness, Bejoykissen Mookerjee, having deposed before the Magistrate that he walked by accident into the cutcherry where the izarah was openly being concocted, and heard what was going on,) haling witnesses in open day to attest the forgery, without taking any steps to ascertain before hand their willingness or unwillingness to become instruments of his fraud; and finally taking so little care to look after them or attach them to his interests that 2 (or according to the case for the prosecution 4 of them,) turn

against him before any proceedings have been taken to prove the forgery to have been committed.

It is also a most remarkable feature in the case endeavoured to be made against Joykissen, that *not a tittle of evidence has been offered or even hinted at by the prosecution, tending to prove that Joykissen had shown any previous desire to have this izarah, or had made any overtures to obtain it.* Surely a man, with so much in wealth and position to lose as has Joykissen, would first have resorted to legitimate means of gaining a desired object, and not until disappointed in so effecting it, would have resorted to the dangerous expedient of forgery. Even Ahab made in the first instance fair offers for the vineyard of Naboth, before he suborned perjurers to put him into possession of that which he coveted.

If the prosecution would have it presumed that it was not so much the profit to be made by the izarah as the proximity of Mucklah to Ooterparah which induced Joykissen to wish to obtain the izarah, then it is clear that he might have had what he desired by the payment of Rupees 1,025 annual jumma. Is it to be supposed that a man of Joykissen's wealth would hesitate twice between the payment of an additional Rupees 123 a year for 10 years and the risk of forgery—forgery not of a kubooleut or such like document which might involve him in litigation with some petty ryot whom he might hope to crush by his own superior means and influence, but forgery of that, which, if the case for the prosecution is to be

consistent with itself, he must have known would bring him face to face with his deadly enemy Hurryhur backed by the whole family of the Dhurs.

We now proceed to the direct evidence in the case.

It will be observed that for the defence we impeach not the *genuineness* but the *date* of Kallykisto's pottah. There can be little doubt that it was executed at the place and in the manner described by the witnesses, whom therefore (as they speak to what really occurred) it would have been impossible to break down by cross-examination (which accordingly was not attempted) as to the facts of their journey from Ooterparah to Chinsurah, and the circumstances attending the execution there. Our defence supposes that Kallykisto's pottah was got up on some date between the 20th and the 22nd after the intelligence had been obtained of the registration on the 20th of Petumber's pottah. We therefore question the account given for the prosecution of the *previous negociations and preparation*, described to have taken place in a manner sufficiently leisurely. We have directed our cross-examination to sifting this part of the history of the pottah; and we submit that of no single fact connected with this stage of its existence can the Court think that satisfactory or true information has been laid before it. We proceed to examine these facts in order.

First.—We have the original application of the Dhurs to Hurryhur to take the pottah, and the substitution of Kallykisto as the izaradar.

Kallykisto before the Magistrate stated that at this meeting the Dhurs refused to let him have the izarah, but that afterwards four days before the pottah was granted, on Hurryhur's becoming his security, they consented; and before this Court he stated that the conversation by which this arrangement was come to was held at Seebnath's lodgings. Afterwards, he states that the arrangement was come to originally at Hurryhur's house, and afterwards again at Seebnath's lodgings.

The *next* fact spoken to is the meeting at Seebnauth's lodgings at which the arrangements for the pottah are said to have been settled. Who were present at this meeting cannot be ascertained. Before the Magistrate, Hurryhur stated that he met the Dhur malikan there, but in this Court it was impossible to ascertain either from Hurryhur or Kallykisto of whom these Dhur malikan consisted. Again, Meglall distinctly states that it was *not* on that occasion, that it was settled that Kallykisto should have the lease. On the other hand, Hurryhur deposed before the Magistrate that *it was* at this meeting that he settled the affairs of giving the izarah to Kallykisto with Sheebnauth and the Dhurs. Kallykisto also says in this Court that it was at this meeting that the Dhurs gave their consent to his having the izarah and that the amount of the jumma was settled.

The *next* stage was the meeting at Sheebnath Roy's lodgings to settle the draft pottah.

With respect to this, the first thing which strikes us is the very unusual proceeding of resorting to a Court Vakeel at all for the settlement of an instrument of such an every-day description as an izarah pottah, hundreds of which are prepared every year in the cutcherries of Zemindars by the Mofussil amlah without the assistance of any legal adviser. If Seebnath was consulted at all, it must have been because something was in hand much more unusual than the mere grant of an izarah yielding a profit of about Rupees 100 a year according to the account of the prosecution, but according to actual collections no profit at all.

The non-production of Seebnath Roy as a witness before the Magistrate was a most suspicious circumstance, and not less so is his failure to appear, and it would seem his absconding from the service of the summons requiring his appearance, before this Court. It must be presumed either that he is afraid to give an account of his share in the preparation of the pottah to Kallykisto, or that he keeps out of the way lest his evidence, showing that it was prepared at a later date than the 18th of Assar, should damage his old clients, the Dhurs.

Now let us see what account we have of what took place at this meeting.

It had been originally stated before the Magistrate by Kallykisto that the draft was prepared at Hurryhur Mookerjee's Cutcherry in Ooterparah, and by

Meglall that it was made out at Seebnath's lodgings at Chinsurah. To reconcile these apparent discrepancies it is now said that the draft was prepared first at Ooterparah and then taken to Seebnath's lodgings for settlement.

The account given in the written statement for the prosecution is as follows :—" The rough draft of the pottah having been submitted to Shibnath Roy for his correction, and some alterations in the draft having been dictated by Shibnath Roy, they were made *in it* by one Gopal Doss, who was a writer in the office of Shibnath Roy."

This statement was varied from in the evidence; two of the witnesses, one of them Gopal Doss, having stated that the draft was after correction *entirely re-copied* by Gopal Doss. With the usual dishonesty of the witnesses for the prosecution, they evaded all opportunity for testing the truth of this account, for when Mohesh Chunder Nundy, the engrosser of the pottah, was called, he entirely refused to recollect in whose handwriting the draft was which was given to him to be copied, whether it was or was not in a handwriting strange to him, and whether it had or had not extensive alterations upon it. It is also to be noticed that Gopal Doss, when before the Magistrate, mentioned not a word of having either altered the draft from dictation or re-copied it. All he then said was—" I *saw* the draft there. I serve as a Mohurrir to Sheebnauth Roy, and so could see the draft."

Meglall, when examined in this Court, would not recollect whether any one was present at Seebnath's lodgings on the occasion of the settlement of the draft except Prawnkisto Chowdry; he says, "Prankisto brought it. It was corrected. It was then given to Prankisto. I directed Prankisto to take it to Ooterparah. Whether he did so or not, I don't know. I then went home."

When he had deposed as above, the following passage was read to him from his deposition before the Magistrate. "The draft of the lease was framed in the lodgings of Seebnath Roy at Hooghly, and after we had all read it over we told Prankisto to take it over to Ooterparah and get it written on stamped paper, and on his return we signed the same at Chinsurah." It is manifest that in this passage he was speaking of all the Dhurs who executed the pottah as having been present at the framing of the draft at Seebnath's lodgings, but the witness when before this Court, though pressed, would not remember who were present, and at last ventured as an explanation that Prankisto had told him that after leaving Shibnath's lodgings, he (Prankisto) had taken the draft to the Dhurs' house, and there explained it to the other Dhurs, which was his reason for using the expression "after we had all read it over." He could not, however, explain how he reconciled this with his statement that he did not know whether or not Prankisto went to Ooterparah when he left the lodgings with the draft. Prankisto, when called the next day,

had of course been tutored to tell the same story. But the tale told by the younger Dhurs would not tally with this. Sibchunder Dhur stated—"I saw the draft at my own house two days after the first Ruth Jattra began. *Meglall* and *Doolall showed it to me.*" Denonauth Dhur stated—"I saw a draft of the pottah to Kallykisto before it was executed. I saw it once only. I was at my house when I saw it. I don't recollect who gave it into my hands. Prankisto brought it to the house. *Meglall was present when he showed it to me.*" Ramchunder Dhur again says—"I saw a draft of the lease at my house at Chinsurah. I saw it five or six days before the pottah was granted. *Meglall and Doolall showed it to me.*"

Fourth.—Another point left in obscurity is the calculation of the jumma of the izarah.

This is said to have been calculated from the hustabood papers—whether by Kallykisto or Hurryhur, whether at Ooterparah or at Shibnath's lodgings, cannot be ascertained, and the fact of production of hustabood papers at all is thrown into considerable doubt by the evidence of Hurrychurn Dhur. This witness says that he gave the hustabood papers to Kallykisto; but having previously stated that he took no part in the negociations for the pottah, he felt obliged to state that he gave these hustabood papers to Kallykisto 3 or 4 days *after* the execution of the pottah. In answer to a subsequent question, he stated that until he gave them over, they had been *all along* in his own

possession. Now Hurryhur Mookerjee states that *Meglall* showed him the hustabood papers.

Kallykisto also says the hustabood papers were shown to him, and when asked by whom, says—"I think by Meglall—decidedly Meglall." He afterwards stated that Hurrychurn gave them to him, while negociations were pending.

Either way Hurrychurn's statement cannot be borne out.

But the fact connected with the pottah upon which the greatest obscurity rests, and which throws the greatest doubt upon the fact of the pottah having been executed upon the day of which it bears date, the 18th of Assar, is the purchase of the stamps upon which the pottah, kubooleut, and zaminamah were executed—the two former being of Rupees 12 each and the latter of Rupees 10.

It was at an early stage of the proceedings before the Magistrate observed from the endorsements on these stamps that they had been purchased at Calcutta, and the fact, as the deeds were drawn at Ooterparah and executed at Chinsurah, appeared suspicious. No account of the purchase could be got before the Magistrate—Kallykisto stating that Prankisto Chowdry and Meglall Dhur bought the stamps, and Meglall on the other hand stating that he requested Prankisto Chowdry to get the pottah written on stamped paper, and that he brought it so written, and he (Meglall) did not not know whence he bought the stamps.

When the matter was examined into more closely in this Court, Kallykisto gave the following account:—"Prankisto gave me the stamp papers on the night of *the* 16*th Assar*. I was in my lodgings at Ooterparah. I don't recollect whether any one else was present. None of the Dhurs were present. Prankisto said he had brought them from Calcutta. I had given Prankisto the money *the day before* in the morning. No one was present I think. None of the Dhurs were present. Prankisto said he was going to Chinsurah. He was going to his aunt. He had business of his own. I gave him the money at my lodgings. I ordered him to get the stamps at Hooghly."

When asked why the stamps were not purchased at Ooterparah, he said at first that the reason was because the stamp vendor lived in Joykissen Mookerjee's house. Afterwards he said, "Meglall was not there, and as the pottah was to be granted by him, it was necessary that the stamps should be purchased in his name." He then, in answer to a question, said, that it was necessary that the person who granted the pottah should purchase the stamp, in order that his name might appear on the back as purchaser.

Now Prankisto says:—

"Kallykisto gave me the money at his lodgings at Ooterparah. He gave me cash. I went to Hooghly to buy the stamps. I enquired of the stamp vendor at the Collectorate, and found that he

had no stamps of Rupees 12. I did not go near the Dhurs. I came direct from the Hooghly Station to Hooghly to buy the stamps. When I could not get them, I went direct to Calcutta. I went from Hooghly to Calcutta by the evening train. I purchased the stamps on the following day. I went to the stamp vendor direct, and purchased the stamps myself."

For convincing proof of the falsehood of this statement we are indebted to the Judge presiding in this Court.

It has been shown by Official papers, that there were at the commencement of June in the Collectorate of Hooghly sixty-six 12 *Rupee* stamps, and that sixty remained in store at the end of that month. It was also proved by an Officer at the Collectorate that stamps could be had out of store by any stamp vendor making an indent for the same at any time before 2 o'clock. It was proved by the stamp vendor that if he made an indent before one o'clock, the stamps could be procured by 4 o'clock, and that an indent might be made for any amount of stamps not less than Rupees 25 in the aggregate.

As Prankisto left Hooghly by an evening train of the day in which he went up, he must have gone up at latest by the morning train, which then passed the Bally Station at 9-30 A. M. and arrived at the Hooghly Station by about quarter to 11 A. M. Going thence direct to the stamp vendor's he must have arrived there long before 1 o'clock, and consequently,

had he applied to the stamp vendor, would have been told that if he would wait till 4 o'clock, he could be supplied with the stamps which he required. Even supposing that he might have arrived at the stamp vendor's later than 1 o'clock, he would have been told that he could have the stamps by the next morning ; and as, according to the prosecutor's story, there was no immediate hurry, he would have waited at Hooghly, where his aunt has a house, in preference to rushing down to Calcutta.

Although the stamp vendor from the Hooghly Collectorate was called, the counsel for the prosecution did not dare to question him, whether he recollected the circumstance of having been applied to by any person for two 12 Rupee stamps, and his inability to furnish them as having none on hand. Further, although the suspicious facts of the purchase of the stamps at Calcutta had been prominently mentioned in the defence before the Magistrate, and the attention of the prosecution drawn to this blot in their case, *the prosecutor has not ventured to put the stamp vendor, of whom the stamps were purchased, into the witness-box.*

It is beyond a doubt that the necessity for purchasing the stamps arose after the 18th of Assar; when news had been obtained of Petumber's pottah. The date of Petumber's pottah being known, it was necessary to antedate the rival pottah, and to procure stamps with a vendor's endorsement of earlier date. These could not be procured in Hooghly or Ooterparah

without an endorsement showing their purchase at a date later than the 18th; but it is well known that there are in the Calcutta Burra Bazaar illegitimate vendors, who make a trade of holding in hand stamps purchased on previous dates from the licensed vendors, for the express purpose of supplying those who may want to antedate documents. From one of these the stamps must have been purchased.

Kallykisto's reason for not purchasing the stamp at Ooterparah is exploded at once by Prankisto's statement, that he never went near the Dhurs. And not the least suspicious circumstance is, that the name of no purchaser appears on the back of the stamps.

Another fact may be noticed. Kallykisto states positively that he gave the money for the purchase of the stamps to Prankisto, on the day before the 16th of Assar, *i. e.*, on the 15th of Assar. Prankisto did not make the purchase till the day following, that is to say on the 16th. If the Court will look at the endorsement on the back of the stamps, he will find that they were sold in Calcutta on the 14th Assar.

One other circumstance is also to be noticed, as tending to throw great doubt upon the truth of the account given by the prosecution of the preparation of Kallykisto's pottah.

The mode in which that pottah has been executed shows that the person taking it was aware of Lokenauth Dhur's interest in the 5 annas share, and *considered it desirable to have his interest conveyed.* Is

it then to be supposed that, if the negociations for and the preparation of the pottah extended from the end of Joistee to the 18th of Assar, steps would not have been taken in that long interval to procure the execution of the pottah by Lokenauth in person—if necessary, by sending it for execution by him to Calcutta? Or at any rate would not pains have been taken to ascertain his acquiescence in the grant of the pottah? It is most certain that he was not consulted at all in the matter, for, had he been so, the prosecution would not have failed to produce him as a witness. The evidence of a man of his respectability,—could it have been procured,—as to the fact of negociations for a pottah to Kallykisto, having been in progress before the 18th of Assar, would have been all-important to the prosecutor's case.

So much for the *bonâ fides* of the pottah put forward by the prosecution, as tested by the account of its preparation. At first sight it appears to be supported by a strong body of direct testimony. But who are the witnesses who depose to its execution on the 18th? Half of them are servants in the employ of Rajkissen and Hurryhur, the very fact of whose presence at the execution, 20 miles away from their employer's house, stamps the pottah with the badge of fraud. The remainder of the witnesses are the Dhurs. These we must consider in the light of witnesses heavily bribed. The original bribe was only a small one, being an advance of jumma on the izarah from Rupees 902 to Rupees 1,025. But though by this they could

be induced to antedate a deed, it is probable that a more substantial inducement was required before they would lend themselves to perjury in support of a false prosecution. Accordingly on the 25th of Srabun, Hurryhur Mookerjee takes from them the putnee of the Mucklah Talook. The sum of Rupees 8,000 is avowedly paid as a *pun*, and the jumma is fixed at Rupees 3,830 a year. Now the existing izarahs, which have several years to run, yield a jumma of Rupees 1,804 + 1,025, or Rupees 2,829 only. Hurryhur is thus paying Rupees 8,000 for the loss of Rupees 1,001 a year. The gain on the other hand to the Dhurs is the same, Rupees 8,000 and Rupees 1,001 annually—a handsome addition to their former income of Rupees 600 a year. Can this be any thing else than a bribe under the guise of a purchase ?

The untrustworthiness of the Dhurs as witnesses has been made apparent by an incident which has occurred in this Court during the course of the prosecution. The Dhurs, one and all, father and sons, while denying the genuineness of the signature of Hurrychurn Dhur as a witness to Petumber's pottah, pointed out what they alleged to be a misspelling of the cognomen, which they alleged to appear on that pottah, as Dhar instead of Dhur.

This notable difference was an after-thought, not having been noticed in the written case for the prosecution until it was introduced therein while the case was being read before the Court. Its fancied

detection was probably due to the over-ingenuity of some of the native mooktears or vakeels on the part of the prosecution. It appeared in itself, when first pointed out, sufficiently contemptible, as it was hardly to be supposed that a forger who had spelt the name of Dhur quite correctly elsewhere on the pottah would intentionally introduce a false spelling, and so confer upon one of his witnesses a name unknown in Bengal. The ingenious fraud was, however, destined to recoil with somewhat fatal effect on its inventors. A pottah to Sreenauth Dutt has been produced, on which appears the name of Hurrychurn Dhur, written in one place *with precisely the same peculiarity* which has been stigmatised by the witnesses for the prosecution as a false spelling, and in another place written more like the signature of the other Dhurs. Both Meglall and Hurrychurn have been obliged to admit the genuineness of the signature of Hurrychurn on this pottah, though they did so with extreme reluctance. The result of the whole of this part of the case has, therefore, simply been to show that the Dhurs are in the hands of the prosecutor, and are ready to adopt and depose to on oath any falsehood which he chooses to put into their mouths.

We may here take occasion to remark that the pottah to Sreenauth Dutt was granted to him *benamee* for Joykissen Mookerjee, who has never attempted to deny the fact; and it was suggested on the part of the prosecution before the Magistrate, that the fact of Joykissen having in his possession this

pottah would account for the manner in which Petumber's pottah was executed. It will, however, be observed on examining the two pottahs, that they are executed in modes very widely differing. That to Sreenauth Dutt (having been executed before the *neyum-puttro* was entered into,) has the signatures of Sibchunder Dhur and Deenonauth Dhur signed by their own hands, as well as those of Meglall and Doolall. That to Petumber is executed by Meglall and Doolall, alone. Had the one been used as a pattern during the preparation of the other it is improbable to suppose that the resemblance would not have been made more perfect.

We now proceed to consider the evidence adduced by the prosecution, impeaching the pottah granted to Petumber Bose.

Much trouble has been taken in this Court, *and here for the first time*, to prove that the Dhurs were at Chinsurah during the whole of the forenoon of the day on which Kallykisto's pottah was executed by them; and that, consequently, they could not on the same morning have been at Mucklah, where Petumber's pottah is represented to have been granted. The whole force of this evidence, however, depends upon establishing the fact that Kallykisto's pottah was actually executed on the 18th of Assar, and not, as we suppose to have been the case, on some subsequent date. We have already remarked that there is not a single external circumstance, nor the evidence of a single witness, unconnected with either the

Dhurs or the Mookerjees, to fix the 18th as the day of actual execution; in fact, there is no unimpeachable evidence of the existence of this pottah before the 22nd of Assar.

Next, we have the direct evidence of Rameshur Ghose and Tarachand Koileah, admitted by both sides to be attesting witnesses to Petumber's pottah, and who depose that they attested it not in the Mucklah Cutcherry, but at Joykissen's house at Ooterparah, and that none of the Dhurs were present on the occasion.

These witnesses are in the nature of approvers. They represent themselves to have become witnesses to a deed which they knew or suspected to be a forgery. But there can be no reasonable doubt that they also have on one occasion, that is to say before the Registrar, deposed on oath to its due execution. We say that there can be no reasonable doubt of this latter fact; first, because in the petition presented by these witnesses to the Magistrate on the 14th of July they made no mention of their refusal to attest before the Registrar, simply saying, "on the very same date the Baboo obliged us to go to Serampore by gharee to have the said pottah registered, and we, being afraid of him, did so;" and secondly, because it is not to be believed that if these witnesses had taken courage to refuse to perform that which they had been sent to Serampore to do, they would not, immediately after their discharge from the custody of the Nugdees at Serampore, have represented the

whole matter to the Magistrate, near the gate of whose residence they were said to have been kept in charge of two Nugdees. There is also great improbability in the tale they tell of having been personated before the Registrar. According to their story, they were taken up to Serampore with the intention that they should attest, not with the intention that they should be personated; yet, on their refusal to go before the Registrar, personators are at once found without search or trouble, as if dropped down from the clouds, for the very purpose. We feel that it is safer to rely upon the absence of all mention in the petition of these witnesses of their refusal to attest on the occasion of registration, and on the improbability of the story which they have told in this Court, of their refusal and personation, rather than upon the direct proof which we have given of their presence at the Registrar's Office on the 20th. The evidence of Takoordoss Hattie on this point, though by no means shown to be untrue, must be cancelled, owing to his unaccountable refusal, when under cross-examination, to remember the fact of his having given a deposition some three months ago, or any fact stated in that deposition, though none of those facts were other than what the defence would have been perfectly ready to admit. That also of Deenonath Sircar, though not shown to be untrustworthy, is not in fact required for the establishment of the facts to which he deposes.

Under any circumstances, the evidence of such witnesses as Rameshur and Tarachand would have

to be received with the greatest caution. They have allowed themselves to be made the witnesses who should naturally support a deed, and then come forward to impeach it. Should the evidence of persons who have placed themselves in such a position be readily credited, no one would be safe in taking a conveyance without first satisfying himself of the character of his witnesses. But in the present case the testimony of these witnesses is rendered doubly suspicious by the manner in which they have been brought before the Court.

On the 14th of July their story of having been compelled to attest a deed, which they had not seen executed was placed before the Court in the shape of a petition. On the 19th of July, Rajkisto Mittre, Rajkissen Mookerjee's am-mooktear, who has all along, as is admitted by the prosecutor, been engaged in conducting the case for the prosecution, bespoke an office copy of the petition. Rajkisto, when cross-examined, would not inform the Court for whom he took these copies; but there can be no doubt that on that date at latest the conductors of the prosecution (if, in fact, the filing of the petition itself was not their act, as Lokenauth Roy's evidence would prove,) were fully aware of the contents of the petition; yet when Kallykisto, on the 23rd of July, appeared as prosecutor, instead of making Tarachand and Rameshur witnesses, he charged them as parties concerned in the forgery. The prosecution was kept hanging over them during the whole of the first proceedings before the

Magistrate. When, on the 7th of February, after the remand of the case, Kallykisto filed his renewed charge, Tarachand and Rameshur *were again charged as criminals.* In this position they continued until the 9th of February, when they were transferred from the dock to the witness-box. Thus were these witnesses brought into Court to give their evidence with the rope about their necks. When they were examined none of the preliminaries prescribed by the wise policy of the law, in cases where those charged as accomplices are admitted to give evidence, were observed. Regulation X. of 1824 empowers Magistrates, in cases of certain crimes, among which is forgery, to tender a pardon to any person not a principal, supposed to have been directly or indirectly concerned in, or privy to, the offence, on condition of his making a full, true, and fair disclosure. Persons to whom pardons are so tendered are to be examined without oath. It is for the Sessions Court alone at the trial to receive the evidence so tendered on oath. Moreover, the Magistrate is to record on his proceedings the considerations which have induced him to deem such a course of procedure advisable. Nothing of this sort has been done in the present instance. Rameshur and Tarachand were examined in the first instance upon oath, without any pardon having been previously tendered to them. They were thus made to pledge themselves to the truth of a statement upon oath, which they could not consequently retract, with the possibility of a prosecution still hanging over

them. No reliance can be placed upon the statement of witnesses examined under circumstances so calculated to intimidate them. Counsel for the defence pointed out the illegality of this course of proceedings to the Magistrate, and his protest against the examination of these witnesses has been recorded. It may be questioned whether evidence taken under such circumstances is legally admissible, or whether it is not invalidated by the original irregularity before the Magistrate.

As respects Rameshur also, it must not be forgotten that his landlord, Rajkissore Mookerjee, has deposed to this witness having, when questioned as to his reasons for having filed a petition repudiating a deed of which he was avowedly an attesting witness, confessed that he did so under the influence of a bribe. We admit that evidence as to conversations must be very cautiously received; but in the present instance the witness who deposes to this conversation is a man of undoubted respectability, connected in equal degree with the defendant Joykissen Mookerjee and the supporters of the prosecution. His testimony was not in the least shaken on cross-examination; and the fact upon which the cross-examining counsel seemed to build much, namely, that Rajkissore Mookerjee did not inform Rajkissen Mookerjee of the statement made by Rameshur Ghose as to the bribe, is at once explained by Rajkissore's explanation, that at the time *he believed that Rameshur's statement as to the bribe was true*, he thought that his relative was engaged

in a disgraceful conspiracy to get up a charge against his own brother, and *felt ashamed* to speak with him on such a business.

Great suspicion is, moreover, thrown upon the evidence of the witnesses Tarachand and Rameshur by the long delay, of nearly a fortnight, which elapsed before they took any steps to denounce the fraud to which they represent themselves as having become unwilling parties. They allege, by way of excuse, that they were actuated by fear of Joykissen. But there can be little doubt that it was known in Mucklah on or immediately after the 22nd of Assar that Rajkissen and Hurryhur Mookerjee were setting up a rival pottah against that of Petumber Bose, and that they would afford countenance and protection to any one who would help them to discredit Petumber's pottahs. It is much more likely that this interval, between the 18th or 20th Assar and the 14th of July, was occupied by the machinations of Kallykisto's supporters to purchase over or intimidate the attesting witnesses to Petumber's pottah. It is pretty certainly to be gathered from their own evidence, that when they did come forward, they did so not of their own spontaneous act, but under the instigation of others. They filed a petition of the contents of which they profess themselves to have been ignorant, and the truth of whose statements they now disallow. Moreover, the pretext upon which the petition was filed turns out to have been merely fictitious. The Petitioners state in their petition that a Nugdee

has been placed over them by Joykissen, and pray for protection; but when examined before this Court, they admitted that no Nugdee really had been placed over them. They dared not depose to the contrary, because they were aware that a jemadar and 4 peons of the Police had been previously placed in the village, and that no order had been passed on their petition, because that fact showed that the statements must be unfounded and no protection required. They contradicted one another when before the Magistrate, as to the manner in which they paid for having the petition drawn up, stating that 4 annas was paid as the joint expense, and each representing that he had paid that sum out of his own pocket. An attempt made in this Court to explain away the discrepancy, by one of the witnesses stating that after his companion had paid the 4 annas the mooktear who drew the petition extorted a further 4 annas, only serves to show the manner in which the witnesses have been tutored. They give a false account of the purchase of the stamp, stating that it was purchased in a hurry on the very day when the petition was presented; whereas the stamp itself shows by the endorsement thereon, that it was purchased on the day previous, *i.e.*, on the 13th of July. Here again we prefer to rely upon the ignorance of the witnesses of the contents of their petitions, and their contradictory statements as to what occurred, for proof that they did not come forward spontaneously to petition, but were tools in the hands of others, rather than upon the direct

evidence of Lokenauth Roy. Without in any manner throwing over this witness as untrustworthy, we feel that the facts to which he deposes were quite sufficiently proved without his evidence.

As far as it was possible to give a direct contradiction to Rameshur and Tarachand, that has been done by the evidence of Woodub Sirdar and Kisto Gomastah, who are said by their witnesses to have fetched them from their houses to Joykissen's cutcherry, but who have been called for the defence, and have directly denied that they ever did so. For some reason unexplained, Nuseeram Pyke and Sreemunto Sirdar, witnesses named by the prosecution to prove the taking of Rameshur and Tarachand to Joykissen's house, were not examined before the Magistrate. The application made to this Court for their examination at this stage of the case was of course, and most properly, refused.

The next two witnesses to impeach Petumber's pottah are Kisto Ghose and Modoosoodun Ghose.

As respects the first, supposing him, for argument's sake, to be the person whose name appears as that of a marksman upon Petumber's pottah, precisely the same objections apply to his evidence, as respects the circumstances under which it was taken, his delay in petitioning, his alleged ignorance of and disallowance of the truth of the statements contained in his petition, his misstatement regarding the purchase of the stamp for the petition, and the mode in which it was paid

for, as apply against the evidence of Rameshur and Tarachand; but it is disputed by the prisoner Petumber Bose, that the Kisto Gose and Modoosoodun Ghose produced by the prosecution are the same Kisto Ghose and Modoosdun Ghose who attested his pottah as marksmen; and he has produced and examined the persons, having those names respectively, who assert themselves to have been the real witnesses, and who depose in favor of the pottah.

It is not a little singular that not in one, but in two instances, application should have been made at first to a person above temptation or intimidation, and that in each case a namesake ready to lend himself to the fraud should have been procured. If Mucklah possesses a corruptible and an incorruptible Kisto, and a corruptible and incorruptible Modoosoodun, and Petumber was so unfortunate as to light upon the incorruptible before the corruptible Kisto, the chances are, that in the case of the Modoosooduns, his luck would have been the other way. The double repetition of the original blunder, and the subsequent success is a little too remarkable to be easily believed in.

Again, the evidence of these two witnesses ascribes to Joykissen conduct which is wholly incredible. Is it to be imagined that any one above an idiot in intelligence would *first* register a pottah with the signatures of witnesses forged to it, those witnesses being in no way peculiarly the persons whose signatures as witnesses would be necessary to ensure credit to the deed, and *afterwards* set about to obtain the

consent of the witnesses whose names he had used in anticipation? Any ryot of Mucklah would have been as appropriate a witness to the pottah as Kisto Ghose and Modoosoodun Ghose. Surely, then, the course to be pursued by a man meditating a fraud would have been, first to ascertain those ready to become his accomplices, and then to make use of their names. Plenty of ryots of Mucklah have appeared to speak to the genuineness of the pottah. If the pottah be false, and these men perjured, why should not convenient and staunch attesting witnesses have been found among their number, and their acquiescence ascertained before registry had rendered it impossible to substitute the willing for the unwilling?

The Kisto and Modoosoodun of the prosecution were both examined under the same circumstances which we have before pointed out in the cases of Rameshur and Tarachand as irregular and objectionable. Much has been attempted to be made out of the fact that the Modoosoodun Ghose, whom we have produced as a marksman, declared on a former occasion that he knew how to write. A little attention to the record of the decision in the case in which he made this statement, will show how little weight is to be attached to this observation. Modoosoodun was sued upon a bond which purported to be signed by him as a marksman. He pleaded, or his mooktear for him, that he was able to sign his name, and would not therefore have executed as a marskman. It was replied, that at a date subsequent to that of the bond

Modoosoodun had executed a mooktearnamah in the Fouzdary Court as a marksman. The record of the Fouzdary Court being sent for proved this to be the case, and accordingly judgment was given against Modoosoodun *on the very ground that he was a marksman*, and unable to sign his name. His conduct as a defendant in the case which was decided against him, between 15 or 16 years ago, may not have been very reputable; but the fact of his being a marksman, instead of being disproved, is fully established. We have filed a deed of sale executed by this witness to one Hurromohun Mookerjee, and registered on the 26th May 1859, which he executed as a marksman.

In a similar manner it has been endeavoured to be shown that the Kisto Ghose examined for the defence can write, and would not have consequently signed Petumber's pottah as a marksman. To make out this, a *kut-kobalah* executed by Kisto Ghose in favour of Tarucknauth Chatterjee, dated , has been put to the witness, and he has been asked whether he did sign his name in full as it now appears on the deed. He has admitted that the deed was executed by him, but explains that on the occasion of the execution his hand was guided by one Rameshur Chatterjee. An inspection of the signature, which is made up of disjointed letters each standing apart from the other, will cause this explanation to be easily believed. Even were the witness able laboriously to sign his name letter by letter, it would not be at all unlikely that he should sign as a marksman as attesting

witness to a deed in which he had no personal interest; and which several other witnesses besides himself had to sign, so that the process of printing in his name would protract the proceedings tediously. Moreover, we have a filed kubooleut, dated the 12th of Bysack 1265, executed by this witness as a marksman, and a deposition made by him in the Fouzdary Court at Serampore, on the 19th January 1860, also signed by him as a marksman.

But apart from the collateral proofs on the point of signature, we have confronted the two Kisto Ghoses and Modoosoodun Ghoses with three or four witnesses for the defence, who allege that they were present at the execution of the pottah to Petumber, who all pointed out the Kisto and Modoosoodun produced by the defence as those who are really present and attested the pottah as marksmen.

We did not think it necessary to re-call the true and false witnesses, to be submitted to the test of identification by each and every of the numerous witnesses called for the defence, as the time of the Court would have been thereby unnecessarily wasted. It was, however, open to the counsel for the prosecution to have called for a repetition of this test as often as they thought fit. They have not done so; and the inference is, that they were satisfied that each witness in turn would, if called upon to distinguish between the Kisto or Modoosoodun of the prosecution and his namesake for the defence, make no blunder in identification.

We may here remark that the fact of Rameshur Ghose, Tarachand Koileah, Modoosoodun Ghose, and Kisto Ghose having been kept so long in the perilous position of criminals charged with forgery, until they have been at length induced to step from behind the bar into the witness-box, is not unsuggestive of the conjecture that originally a design may have been entertained of bringing round Petumber Bose also by the same system of intimidation, which it is by no means unlikely may have been accompanied by a little persuasion of a pleasanter nature. The prosecutor has himself admitted that his mooktear represented the effect produced on Modoosoodun by the prosecution being kept hanging over him to have been that the witness was brought to tears and entroaties to be released from peril and taken into favor as a witness. The same result may have been hoped for in the case of Petumber.

Having now analysed and commented upon the case for the prosecution, and shown, we think, that it is one upon which no safe reliance can be placed, especially where the charge in support of which it is made is so heavy a one as that of forgery, we proceed to state and consider the substantive case for the defence. The main particulars of this, except in so far as they have appeared, in this Court, in evidence, are of course derived from the statements of our client, Petumber Bose, who has been rendered unable to substantiate them on oath by the very unusual course taken in the present instance of

instituting a prosecution for forgery before the merits of the rival pottahs have been submitted to the test of investigation in a Civil cause.

The defendant Petumber Bose was for some years a gomastah in the employ of the other defendant, Joykissen Mookerjee, having charge of extensive estates, and holding a situation of considerable trust. Having been originally a man of some little property, and having accumulated something more while in service, he left the employ of Joykissen in the year 1264, and has never since been in Joykissen's service. His occupation since that time has been that of a dealer in cloth. Petumber conceived the idea of extending his business by establishing a place for the purchase and manufacture of gunny cloth, for which purpose it seemed to him to be desirable to obtain some interest in one of the villages near the banks of the Hooghly, in which that manufacture is carried on. Having occasion once or twice to pass through Mucklah, he made some enquiries of the villagers there, and ascertained that the place would be well suited for his purpose. He communicated his views as to the establishment of a gunny cloth trade near the river to a relation, Tarucknath Ghose, who had formerly been connected with Mucklah as a gomashtah of a 10 annas share while under a former izardar.

In the month of Choit 1266, Tarucknath Ghose was passing through Mucklah, which lies on his road from his house at Echapore to Calcutta, and called

upon Hurrychurn Dhur at the 5 annas cutcherry at Mucklah, where Hurrychurn spent the greater part of his time. He there ascertained that the Dhurs were willing to let the 5 annas share on izarah, and mentioned to Hurrychurn that Petumber Bose would probably like to take it; whereupon Hurrychurn said, that if Petumber wanted the izarah he might make his proposals to the Dhurs after the end of that month, that being the end of the Bengalee year.

Tarucknath Ghose told this to Petumber, and the arrangement appearing to Petumber to be desirable, he went, in company with Tarucknath, to visit the Dhurs at Chinsurah on the 2nd or 3rd of Bysack; and there came to an agreement with them to take the izarah of the 5 annas share at an annual jummah of Rupees 902 and Rupees 200 salamee; and it was there arranged that Petumber should meet Meglall and Doolall Dhur, the managing Sebaits, at Mucklah on the 6th of Bysack following, and should be put into possession of the 5 annas share in anticipation of his receiving a pottah, when he should have provided a surety. On the 6th of Bysack, while Petumber and Tarucknath Ghose were going to Mucklah, Petumber thought it best to ascertain whether his old master Joykissen Mookerjee, who held already in the name of his servant, Sreenauth Dutt, an izarah of 10 annas share of Mucklah, would have any objection to his (Petumber) holding an izarah of the other share. Tarucknauth Ghose and Petumber Bose accordingly called on Joykissen at Ooterparah, and

Petumber told Joykissen of his wish to take the izarah of the 5 annas share, with a view to establishing a gunny cloth business. Joykissen, apprehending no annoyance from the neighbourhood of his old servant, expressed his perfect willingness that Petumber should take the izarah—and this was the beginning and end of all that Joykissen had to do with the matter.

On the evening of the 6th Bysack, Petumber Bose and Tarucknauth Ghose went to the 5 annas cutcherry, where they found Doolall and Meglall Dhur, and also Hurrychurn Dhur who ordinarily resided there as Gomastah.

On the following morning several of the ryots were called in. One of them, Madhub Mundul, under the Dhurs' directions, wrote out the amalnamah, which was executed by Doolall and Meglall Dhur. Its contents were read out once or oftener to the ryots assembled, who were also verbally told to pay their rents to Petumber. The salamee was paid ; a bamboo was planted in token of change of possession, and Petumber Bose and Tarucknauth Ghose, as his gomastah, were put into possession of the 5 annas cutcherry.

At the time of the execution of the amalnamah the hustobood papers for the former year were handed over by the Dhurs to Petumber, and have been filed in the cause.

It may be noticed here that no mention of the salamee was made in the amalnamah at the request

of the Dhurs, who claimed it as their own perquisite as acting managers.

On the 6th of the following Joistee, Tarucknauth Ghose, on behalf of Petumber Bose, made pooniah for the 5 annas share.

It had been arranged on the day when the amalnamah was given, that the pottah and kubooleut should be executed within a month, and Petumber Bose then offered as his surety his friend Essanchunder Ghose, and the Dhurs took time to enquire into his means.

Petumber was taken ill and obliged to go home, which caused delay in the execution of the pottah. The time for celebrating the Ruth approached, and Hurrychurn Dhur came over to Mucklah to obtain funds from the izardar for its celebration. Finding that Petumber was absent, and his gomastah not in funds to pay him, Hurrychurn prevailed on the ryots to pay him one kist, promising that when the pottah should be executed, he would account to Petumber for the amount. This was at the end of Joistee or early in Assar.

An arrangement was subsequently come to, that Petumber Bose, with his surety, who had in the meantime been approved of by the Dhurs, should meet the Dhurs on the 17th or 18th of Assar at the 5 annas cutcherry at Mucklah to complete the pottah, kubooleut, and surety deed, or zamineenamah, of which the Dhurs were to bring drafts with them.

Accordingly, on the evening of the 17th of Assar, after all the festivities at the Oolta Ruth had been completed, Doolall, Meglall, and Hurrychurn Dhur went down to Mucklah by boat, taking with them a person named Harradun Mitter, who had come to their house on the occasion of the Ruth, and who was slightly acquainted with them, and in the habit of writing out documents.

The Dhurs and Harradun Mitter arrived at the Mucklah Cutcherry late at night and found there Petumber Bose, his gomastah Tarucknauth Ghose, and the surety Issanchunder Ghose. The drafts were brought out and perused by Petumber Bose, who approved of them with very slight alterations.

Very early the next morning, the 18th of Assar, Petumber Bose, accompanied by Doolall Dhur, went to Ooterparah, at a distance of from ½ to ¾ of a mile, and there Doolall purchased two stamps of Rupees 8 each, and Petumber purchased another of the same amount; after doing which they returned to the cutcherry, having been absent about ¾ of an hour. On their return, the pottah, kubooleut, and zamineenamah were engrossed on the stamped papers, but by some error the pottah was engrossed on the stamp paper purchased by Petumber, instead of on one of those purchased by Doolall, which it had been intended should be used for that purpose. Copies also were made on plain paper of the pottah and zamineenamah, which copies had been partly prepared by Harradun

Mitter during the absence of Petumber and Doolall on their errand for the stamps; and two mŏoktearnamahs were engrossed on stamped paper, and two receipts were written out by Doolall. The pottah, kubooleut, and zamineenamah were executed in the presence of several ryots and munduls, who had been called in or were by chance passing by the cutcherry. These instruments were also attested, the witnesses attesting the pottah being Rameshur Ghose, Tarachand Koiah, Bhogoban Dass, Hurrychurn Dhur, Harradun Mitter, Kisto Ghose, and Modoosoodun Ghose, the two last of whom not being able to sign their names, Bhogoban Doss signed their names, and made a mark for each, the witnesses touching the pen. Meglall and Dŏolall also signed the receipts, the one being for Rupees 22 arrear of the rents of the former year, which Petumber Bose was by the amalnamah authorized to collect, and the other for Rupees 150 on account of rent of the current year; that amount being made up of Rupees 25 paid then in cash by Petumber, and Rupees 125 collected by Hurrychurn Dhur from the ryots, as before stated, and for which credit was then given. These receipts have been filed and proved.

The execution of the instruments was completed from ½ past 8 to 9, or a little after, and the Dhurs went away, being in haste to catch the up train from Bally, which then arrived at Bally about 9-31 A. M.

From the time of the amalnamah to the present, Petumber Bose has remained in undisturbed possession of the 5 annas cutcherry, and the ryots, with

but very few exceptions, have paid him the rents for the 5 annas share.

We will now briefly epitomise the evidence upon which the above case for the defence rests.

Hurrischunder Cowal, Ramculpo Chuckerbutty, and *Luckhenarain Chuckerbutty*, 3 inhabitants of Kinkirbatty, and the first named the former Talookdar of the place, have proved that Petumber Bose ceased to be gomastah of Kinkirbatty in the year 1264, and never (as the written statement for the prosecution avers,) returned there as karkoon or in another capacity. Not a single witness was called from Kinkirbatty or the neighbourhood for the prosecution either to prove the statement contained in the written case for the prosecution, or to contradict the evidence on this point brought for the defence. The fact of Petumber Bose having been in the employ of Joykissen Mookerjee at the time of the execution of the izarah, or at any time within the last 3 years, *rests entirely in assertion* and must be taken as entirely disproved. We filed an authentic copy of a deposition given by Petumber in another case, before the present one was dreamt of, which places the point above suspicion.

The three witnesses just named have also given slight evidence of Petumber being a man of some little property, and of his having engaged in a cloth trade after he ceased to be gomastah of Kinkirbatty.

Keshubnauth Joogy, a Calcutta merchant, carrying on business on an extensive scale, has proved, that

since November 1859, Petumber Bose made purchases from him of cloth as a trader.

This witness produced his books, but the learned counsel for the prosecution declined to cross-examine him upon them, and very candidly admitted that it was sufficiently shown that at the time of which this witness spoke, Petumber was carrying on some trade in cloth.

Next, we have the inhabitants of Mucklah, who were present at the execution of the amalnamah and pottah. These consist of Bhogoban Mundul, Modoosoodun Ghose, Kisto Ghose, who were attesting witnesses of the pottah, Rajub Mundul, Issurchunder Mundul, Kalachand Ghose, Rajkissore Mundul, and Poran Ghose, ryots living in the neighbourhood of the 5 annas cutcherry, who either came there by chance, or were called in when the amalnamah or pottah was being given; Madub Mundul, who wrote out the amalnamah, Kisto Sircar, the gomastah of the 10 annas share of Mucklah, who being at the 10 annas cutcherry, immediately adjoining the 5 annas cutcherry, went into the latter, and saw all that was going on; Tarucknauth Ghose, the gomastah, who was with Petumber, and lastly, Harradun Mitter, the writer of the pottah.

On the evidence of this last witness a few remarks should be made.

An endeavour was made, on cross-examination of this witness, to question his alleged previous acquaint-

ance with the Dhurs, and his employment about the Hooghly Cutcherry, and consequently to throw doubt upon the probability of his having accompanied the Dhurs to Mucklah. It was also stated that he was a distant connection of Aunonto Mitter, a mooktear of Joykissen Mookerjee, the suggestion being that he was persuaded to write the pottah, not by the Dhurs, but by Joykissen Mookerjee. With reference to this, however, it must be remarked, that Harradun Mitter was made a defendant to the charge of forgery before the Magistrate, and appeared voluntarily to answer the charge, avowing himself to be the writer of the pottah; but as the committing Magistrate has remarked, "no witness for the prosecution either pointed out the present Harradun as concerned in the fabrication, or even mentioned his name. And in the lengthy address of the Counsel for the prosecution in the Magistrate's Court, which lasted some hours, the name of Harradun Mitter was not once mentioned, nor was his committal to take his trial asked for. Under these circumstances, the committing Magistrate had no alternative, but to acquit Harradun Mitter; but the conduct of the prosecution with respect to this man, who, if the pottah written by him was a forged one, would be among the principal criminals, is inexplicable, unless on the supposition that the Dhurs were afraid to have the charge pressed against him, fearing that he would produce evidence to prove his previous acquaintance with them, his residence at Hooghly, and his presence in their house

on the day of the Ooltah-Ruth. At any rate it is certain, that had the charge been pressed against Harradun Mitter, full evidence would necessarily have been brought before the Court to elucidate his previous career, his connection with the Dhurs, and his whereabouts on the day of the Ooltah-Ruth. A prosecution which has not dared the result of such investigation can hardly expect to gain much with the Court by counting on the want of courage or memory of a witness subjected to the cross-examination of skilful and experienced counsel upon these points. Moreover, the account given by Harraduu Mitter of his connection with the Dhurs and his occupation at Hooghly contains nothing incredible or contradictory. The utmost that can be said against it is that it is somewhat meagre, and that the witness was not, upon the spur of the moment, able to give a very particular account of his previous interviews with or employment by the Dhurs, or of the names of the different persons who had given him employment at the Hooghly cutcherry. Evidence would not have been admissible for the defence in this Court on this trial, (even had it been practicable to seek out such during the time when the attention of the prisoners and their legal adversaries was fully occupied with the business of the defence,) to show Harradun's previous history, as every trial would be endless if evidence might be given of the antecedents of the witnesses; but such evidence would have been perfectly legitimate, and would have been applied to a most material issue had he been a

defendant. Of this the prosecution was doubtless well aware.

Lastly, *Rajkissore Mookerjee*, a witness of the highest respectability, who has been many years in the employ of Government, as were his forefathers, and who now holds a situation in the Military Auditor General's Office on a salary of Rupees 200 a month, and who holds a very considerable jumma in Mucklah, which village he was, about the time of the occurrences in question, in the habit of visiting almost daily from his house in the adjoining village of Ooterparah, has fully proved Petumber's possession of the 5 annas cutcherry, from early in Bysack to the present time. He has also proved *that Hurrychurn Dhur came to the witness's house in Bysack, and told him to pay his rents to Petumber*, and that witness has since paid his rents to Petumber, and almost all the ryots have also done so. The evidence of this witness as regards the confession made to him by Rameshur Ghose of having received a bribe from Rajkissen, we have already commented upon. He is equally connected with both Joykissen and Rajkissen. All that has been attempted in the way of questioning his testimony consists in his having been made to admit (which he did without any hesitation on cross-examination,) that he has on two occasions before given evidence in Joykissen's favor, or rather on Joykissen's subpœna. One of these occasions was in a case between Joykissen and Rajkissen, in which many of the respectable inhabitants of Ooterparah were subpœnaed on either side. He had

also given evidence on one occasion on the subpœna of Rajkissen.

We have here a very strong body of direct testimony to the execution of the pottah impeached as a forgery, consisting of eleven eye-witnesses, eight being ryots whose houses are in the immediate vicinity of the place of execution, one the writer of the pottah, and two gomastas. The body of evidence as to the grant of the amalnamah and to the continuous possession thereunder of Petumber Bose is still stronger, Madhub Mundul and Rajkissore Mookerjee being added to the above number.

We also submit to the Court, that the mode of execution of Petumber's pottah, as shown on the above evidence, is much more natural and consistent with a supposition of its being a *bonâ fide* instrument than the account given of the execution of its rival.

What place so natural for the execution of the pottah when granted to an izardar of the stamp of Petumber Bose as the cutcherry of the mehal of which the izarah is taken? On the other hand, what more unnatural than that Hurryhur, a man of considerable wealth, should take the trouble to go up with his so-styled relative and a boat-load of witnesses all the way from Ooterparah to Chinsurah, to save the trouble to the Dhurs of coming down? According to the case for the prosecution, there was no hurry for the execution of the pottah to Kallykisto, which might well have waited until the Dhurs, after the

Ruth and all attendant confusion was over, should have leisure to come down to Ooterparah or Mucklah to execute.

Again, as respects the witnesses, who so natural to become attesting witnesses to Petumbers's pottah as the writer and half a dozen of the ryots surrounding the place of execution, in addition to the gomastah of the Talookdars granting the pottah? What more unnatural, when we look at the rival pottah, than that a boat-load of witnesses should be carried up a distance of 20 miles, all being the servants of one family; that Hurryhur himself should become an attesting witness, a thing most unusual for a man of his rank, in whom it would in fact in Native society be considered a most unbecoming and almost a disgraceful act, and that not a single neighbour should be called in to assist in the attestation. Every precaution is taken in the case of Kallykisto's pottah, that no outsider shall be present, of whose evidence the fabrication cannot make quite sure. The witnesses to Petumber's pottah are chance by-standers, including four in no way particularly connected with Joykissen or his supposed shadow, Petumber.

Surely, if Joykissen had been contriving a forgery, he would have had the pottah abundantly attested by his servants or dependants, to provide against the chance of some of the outsiders going over to the enemy. In answer to this, it is suggested that he cautiously avoided such a course from his wish not to

be seen at all in connection with the pottah; but this argument fails, for one of the witnesses who takes the most active part in the attestation of the pottah, *viz.*, Bhogoban Mundul, *was*, at the time of the execution of the pottah, in Joykissen's employ, and was well known to attend at his house daily. The conduct ascribed to Joykissen by the prosecution is, therefore, wholly inexplicable. If he wished to keep aloof altogether, why let his servant Bhogoban appear in the matter? If, on the other hand, he was forging, and wished to have staunch witnesses, why not have had more numerous witnesses of the description which he could surely count upon? If one servant, why not many?

All is natural if the story for the defence be accepted. An izarah was being taken by a man without servants or dependants. The witnesses therefore were chosen from the immediate neighbours, who chanced to be at hand. The deeds were *bonâ fide* ones and no contest was anticipated. The witnesses were not therefore numerous or carefully selected.

The question was put to many of the witnesses for the defence by prosecuting counsel, why, being present, and able to write, they also were not asked to become attesting witnesses? We submit that the scantiness of the attestation affords a strong presumption of the genuineness of the deed, especially when it is shown that there are ryots of Mucklah in attendance ready to swear to the truth of the pottah. In fact, marksmen are the last witnesses whom a

forger would choose to attest his deed, as there is nothing to fix them, and they may always go round with apparent honesty, denying that they ever attested; whereas one who has signed his name on a deed is to a certain extent pledged to support it, and is, at any rate, a comparatively harmless witness, should he go round to the other side.

Strong as the evidence for the defence is numerically, doubtless an attempt will be made to discredit it, by urging that it is procured by what the committing Magistrate has termed the almost paramount influence exercised by Joykissen Mookerjee in Mucklah. We protest against this being assumed as a fact. It is true that Joykissen Mookerjee holds *benamee* an izarah of the 10 anna share of Mucklah, though the fact was not generally known among the ryots at the time when the pottah was executed. But, on the other hand, there was the influence of the Dhurs, and a far more paramount and permanent influence obtained by Hurryhur Mookerjee as holder of a putnee of the whole sixteen annas obtained by him before any of the Mucklah witnesses were examined before the Magistrate.

The strong direct evidence of Petumber's possession previous to the execution of the pottah, which in itself affords so violent a presumption in favor of the genuineness of that instrument, is corroborated by the undoubted fact, that from and after the execution of the pottah, Petumber has been in possession of the 5 annas cutcherry. We say an undoubted

fact, because, although Meglall Dhur deposed that he gave Kallykisto possession of the 5 annas cutcherry, and introduced the ryots to him there, Hurrychurn Dhur has acknowledged that they did not go to the 5 annas cutcherry, being afraid of some disturbance, but that the ryots were introduced to Kallykisto at Jodoo Ghose's house; and it is admitted by Kallykisto that he did not get possession of the cutcherry, and Kallyksto's gomastah has never had possession of the 5 annas cutcherry house, but has all along had his quarters at Jodoo Ghose's house. It may well be doubted whether any introduction of ryots to Kallykisto ever took place; as we find Hurrychurn Dhur, Meglall Dhur, and Kallykisto giving such contradictory accounts of the ceremony. Meglall placing it at the 5 annas cutcherry, Hurrychurn at Jodoo Ghose's house, and Kallykisto partly at the one and partly at the other, Hurrychurn representing it as having occupied the whole of one day and half of the next, Kallykisto saying that he was at Mucklah only one quarter of an hour on the first day and two hours and half (2½) on the second; but be this as it may, it is certain that Kallykisto never had possession of the 5 annas cutcherry, and that his pretended possession under the izarah at all has been merely colorable. No evidence at all was produced before the Magistrate to prove Kallykisto's possession.

This fact of the possession by Petumber is a very strong one in the case, as in the absence of a single tittle of evidence to the contrary, it must

be presumed to have been given quietly. It is neither stated in the case for the prosecution, nor has a single witness been called to prove, that possession was taken forcibly by Petumber. If it be once established that possession was given to Petumber by the Dhurs, the *bonâ fides* of the pottah to Kallykisto is entirely destroyed.

The account given by the witnesses who were present at the cutcherry on the days when the amalnamah and pottah respectively were executed is very consistent; a most severe and protracted cross-examination elicited singularly few contradictions or discrepancies, and those few on matters of no material moment; and the only point upon which, as far as we can judge from the case for the prosecution and the course of cross-examination, this evidence will be seriously attacked as inconsistent or improbable, is that relating to the purchase of the stamps by Petumber Bose and Doolall Dhur on the morning of the 18th of Assar.

They were purchased very early on the morning of the 18th of Assar, the day of the execution of the pottah. It is urged that they were purchased at an unnaturally early hour. But no one that is acquainted with the habits of the rural population of Bengal will attach any weight to this objection. It will be quite sufficient for our purpose that they were purchased at any time between 6 and 7 A. M. The Dhurs did not leave the cutcherry, after the execution

of the pottah, until such time that it was necessary for them to hurry off to catch the up-train, which arrived at Bally at 9-31 A. M. If, then, the stamps were purchased at from half-past 6 to 7, there would be ample time, considering the shortness of Bengalee deeds, the fact of drafts having been previously prepared and that two writers were at work and one had been at work, on the copies on plain papers previously, to complete all that is represented to have been done at the cutcherry before 9 or 9¼ A. M. Witnesses have spoken to Doolall and Petumber having gone to purchase stamps very soon after sunrise, and have described them as being absent for a space hardly sufficient to have enabled them to go from the Mucklah cutcherry to the stamp vendor's office, distant about half a mile, purchase the stamps, and return; but the inaccuracy of native witnesses of the lower orders in fixing times and describing their duration is proverbial; and that witnesses, well acquainted with the distance between Mucklah cutcherry and the stamp vendor's office, should name a time too short for the accomplishment of the distance, merely serves to show the inveteracy of this habit of inaccuracy.

The stamp vendor himself has been produced. The learned counsel who drew up the case for the prosecution have thought fit to style this man by anticipation (with no other apparent reason for so doing, than that he is an old servant of Joykissen, holding a situation of great trust and responsibility,)

a "creature" of Joykissen; but we confidently submit to the judgment of the Court, whether he did not give his evidence with extreme candour and fairness. He could not recollect the time when these particular stamps were purchased, and thus failed the defence in the principal point upon which he was called; but he stated that it was no unusual thing for stamps to be purchased very early in the morning. This man in his *Maskabar*, or monthly official return of stamps sold by him during the month of June, which was filed early in July, and was produced from the Collector's records, had entered the sale, on the 30th of June, (or 18th of Assar,) of two stamps of Rupees 8 each to Doolallchurn Dhur for a pottah and kubooliut, and of one stamp of 8 Rupees value to Petumber Bose, besides an 8 annas stamp to each of those persons. These appear as the last entries made on that day, but the fact, so far from being against the defence, serves much to set up the credit of this witness. Had he been the *creature* that he has been stigmatized, what would have been easier than to have entered several sales subsequently to those to Doolall and Petumber, thus giving those sales the appearance of having been made early in the morning? If the witness be (as we think the Court will from his evidence conclude that he is,) trustworthy, then though he has failed to help the case for the defence by deposing to the time of day on which he sold the stamps, he has proved a very material fact shown also by the entry in his *Maskabar*, *viz.*, that Doolallchurn

Dhur (whom he previously knew by name,) came to his office on the 18th of Assar in company with Petumber Bose, and purchased two stamps of Rupees 8 each; which fact, if established, is equally corroborative of the story for the defence, and fatal to that for the prosecution.

The learned counsel for the prosecution seemed to make much of the discovery that the endorsement (in this witness's handwriting,) on the back of the stamp on which Petumber's pottah has been engrossed, shows the sale of that particular stamp to have been made to Petumber Bose, whereas the entry in the *Maskabar* shows that the stamp for the pottah was sold to Doolallchurn Dhur. This discovery, however, if viewed in its right bearing tells strongly in favor of the defence, as it tends to show the *bonâ fides* of those who prepared Petumber's pottah. No fraud being contemplated, things were conducted with that carelessness which honesty often allows. The stamp purchased by Petumber Bose was, by an oversight, used for the pottah, instead of for the instrument for which it was intended. Had fraud been at work, more care would have been taken in the first instance; or at any rate as soon as it was discovered that the pottah had been engrossed on a stamp bearing the wrong endorsement, a new stamp could have been procured from the convenient creature with the endorsement required.

Having thus commented at great length, but not, perhaps, greater than the importance of the case

required, upon the probabilities and evidence for and against each of the rival pottahs, it remains only for us to distinguish between the cases of our two clients.

We confidently expect for both a verdict of acquittal, on the ground, we trust, that the Court will consider that the probabilities and evidence in favor of the genuineness of Petumber Bose's pottah far outweigh those against it; but we should not be doing justice to our client, Joykissen Mookerjee, should we fail to point out that the evidence, such as it is, to affect him is much weaker even than that against Petumber Bose.

His connection with Petumber's pottah, except in so far as it depends on the evidence of the approvers, Rameshur Ghose and Tarachand Koilea, and his supposed conversations with the Kisto Ghose and Modoosoodun Ghose, whom it pleases the prosecution to presume to have been the persons whom the supposed forgers of Petumber's pottah intended should become witnesses in favor of the pottah, rests on conjecture only.

Now, does the connection proved to have existed between Joykissen Mookerjee and Petumber Bose, joined to the fact of Joykissen already holding 10 annas of Mucklah in izarah, raise, we will not say, the necessary inference upon which a conviction should rest in criminal cases, but even that reasonable suspicion upon which men will act in the affairs of

every-day life, that Petumber Bose is the mere instrument of Joykissen Mookerjee, and the izarah set up by the former *benamee* for the latter? No relation of master and servant has been shown to have existed between Joykissen and Petumber within the last three years. The particular relation alleged in the case for the prosecution has been satisfactorily disproved. Petumber Bose formerly held a situation of some trust under Joykissen, and it has been established in evidence that he carries on some trade of his own. It is hardly reasonable to suppose that he would permit himself to be made a tool for so dangerous a purpose as standing a prosecution for forgery. Is there anything incredible in the story he tells of his wish to establish a trade in gunny cloth at Mucklah, and his taking an izarah as a means of gaining influence in that quarter to assist him in carrying out his views? We have already remarked, that there is a total absence of any proof, or even suggestion, that Joykissen had set his mind upon having the izarah of the 5 annas share, or had made overtures to obtain one. Could this have been done, we grant that the case would have been very different; but does not the absence of any such proof rather speak strongly to the fact of Joykissen not really having wanted any such izarah?

Doubtless, an impression is likely to be created, and probably has been created, of Joykissen having an interest in the impugned izarah, by the fact of his having, as he avowedly has done, taken an interest

in this case from the very outset, and assisted Petumber in his defence even before he (Joykissen) was himself made a defendant. But this impression is an unjust one. The petitions of the Dhurs and of Rameshur Ghose and Tarachand Koilea, filed before the prosecution commenced, were quite sufficient to show Joykissen Mookerjee that he was the person really aimed at by the prosecution, and that the net was cast which, sooner or later, was to involve him in its meshes. Hence the mere motive of self preservation dictated the necessity of narrowly watching and sifting the case for the prosecution from its very commencement. It would be hard if common measures of prudence should be construed into tokens of complicity in crime.

PLAINTIFF'S REPLY TO THE DEFENCE.

In commencing my reply to the defence which has been made for the prisoners, I must particularly point the attention of the Court to the nature of the charges.

They are for forging, uttering, and procuring an uttering of a pottah, alleged to have been executed by Doolall Dhur and Meglall Dhur, and attested by Hurrychurn Dhur in favour of the prisoner Petumber Bose; whereas the signatures of all the above three parties were forged, and which was well known to the two prisoners. The whole question is, therefore, narrowed to these two simple points,—are the signatures forgeries? and, if so, were the prisoners cognizant of the fact? The fact of the forgery has been positively sworn to by Meglall Dhur and Hurrychurn Dhur, who, on their oaths stated, that they and Doolall Dhur did not write their names, which appear upon Petumber Bose's pottah; and the deposition by Doolall before the Magistrate (which has been put in) is to the same effect. There is also other evidence, which, though not so positive, is yet circumstantially conclusive against the genuineness of these three signatures, and into the detail of which I will presently enter. Now this has been contradicted by the positive evidence of witnesses produced by the prisoners, alleging that they were present and saw two of the Dhurs execute, and the third attest, the disputed

pottah. The defence which has been put in has not been confined to an examination of the evidence, and of the weight of evidence; but an attempt has been made to distract the attention of the Court by the introduction of matters which might all be admitted to be true, and yet be perfectly compatible with the guilt of the prisoners. However intense the animosity in the Mookerjee family, or however endless the litigation among them, it cannot establish the fact of the genuineness of the signatures of the Dhurs; and this is not the tribunal, nor can this be the occasion, in which those numerous disputes can be tried over again, and a verdict pronounced as to which of the parties was in the right or the wrong.

If then it is not competent for this Court to arrive at an opinion on the merits of these disputes, the whole of this mass of evidence proves nothing else than the existence of disputes; and it will be just as fair for me to call upon the Court to pronounce Joykissen Mookerjee in the wrong, and to point to that as evidence of his having contrived these forgeries, as it is for my friend to require that the Court should throw the blame on the brothers and nephew of Joykissen; and therefore find that he cannot be guilty of these charges. The logic in each case is equally false, and involves what the law of evidence steadily rejects, namely, the introduction of a number of *collateral* issues, than which nothing can more tend to defeat justice. I distinctly deny the right of my friend to make use of the records which he has placed on the

files of this Court. I submit to the Court that these decisions or opinions, or whatever they are, cannot be evidence, and ought not to be taken into consideration; because it is perfectly probable, that if the rules of the Court had admitted of it, (which they do not,) these documents might all be explained, by showing the absence of material witnesses, actual compromises, or many other circumstances which cannot now be brought forward; and I contend that no issue ought to be raised which the Court is incapacitated from determining.

I will now shortly call the attention of the Court to the case for the prosecution, what has been proved, and what are its probabilities; and then I will examine the defendants' case, and show what has not been disproved; and the improbabilities by which the case of the defendants is overwhelmed.

The family of the Dhurs had let two-thirds of their dewutter property to Joykissen Mookerjee about two years and half previous to last Assar. It is admitted that Joykissen is the real lessee ; it has been sworn by Meglall Dhur, one of the managers, that on the 1st of Assar last, he applied to Hurryhur Mookerjee to take a pottah of the remaining one-third, alleging that they desired his protection from the oppressions of Joykissen ; that Hurryhur declined taking the pottāh, but offered to stand security for Kallykisto Roy Chowdry if the pottah were given to him. Such was the commencement of the transaction, and there

is nothing improbable on the face of it. I will even suppose that Joykissen was not cognizant of any oppressive act; yet nothing can be more likely, than that the gomashtas of the larger shareholder should endeavour to exact more than their dues from the tenants, who had to pay a one-third of their rents to the weaker party, while the very existence of difference between the uncle and the nephew would point him out to the Dhurs as a ready patron and willing protector. The story is plain and probable, and beyond that I wish to raise no argument. At the same time I must point the attention of the Court to what I consider to be a strong fact; that however the Dhurs may have desired protection against Joykissen, no attempt has been made by the defence to impute to them the slightest hostility to him up to the 18th of Assar: quite the contrary, for the defence alleges that on that day a pottah was given to his co-defendant, Petumber.

I am desirous of shortening this case by avoiding a detail of those facts which are well known to the Court, and not of very prominent importance. I therefore proceed at once to the execution of the pottah. It is proved by the evidence of Bhoyrubchunder Doss, Benodebcharry Sircar, Bissumber Holdar, Bhojohurry Mitter, and Moheschunder Nundy, that they all left Ooterparah in a boat about 9 o'clock on the night of the 17th, and proceeded to Chinsurah to the house of the Dhurs, where they arrived about daylight on the morning of the 18th, where they

saw the whole of the Dhur family, all of whom, with the exception of Doolall, who is dead, corroborate their evidence, and I will here observe that these 5 persons, together with Sibchunder Dhur and Ramchunder Dhur, all positively swear that Doolall, Meglall, and Hurrychurn were all in their house at daylight on the morning of the 18th, and remained in it till after one o'clock in the day. This is also confirmed by the evidence of Meglall and Hurrychurn. There are therefore ten persons who positively swear to a fact which completely negatives the execution of Petumber's pottah at Mucklah between 8 and 9 in the morning. There cannot be any mistake about the date, for the festival of the Ruth, which had been kept at the house of the Dhurs, closed on the evening of the 17th. The next point in the case is the evidence of Hurryhur Mookerjee, Prankissen Chowdry, Kallykisto Roy Chowdry, and Obhoy Roy, who all positively swear to their leaving Ooterparah, and taking the first train at Bally, from whence they proceeded to Chandernagore, and arrived at Chinsurah about ½ past 10 or 11 o'clock, where they found the party who had come in the boat, and also the Dhur family, including Doolall, Meglall, and Hurrychurn Dhur. Here, then, are four additional witnesses to the fact of the three last members of the Dhur family not having been at Mucklah between 8 or 9 on that morning; for, if they had been there, they must have returned by the same train which brought the party from Bally, and would have been seen by them.

The whole number of witnesses to this fact is no less than 14. Now admitting, for the sake of argument, that some out of the large number of persons, exposed as they were to the long and skilful cross-examination of my friends, may have fallen into discrepancies, or have been led even into contradictions on the numerous minor points on which they were questioned; yet if on the important fact, namely, the actual presence of the three Dhurs at Chinsurah, they have all been consistent and unshaken, the genuineness of Petumber's pottah is destroyed.

But here another fact calls for remark as strongly indicative of the truth of the story, that Hurryhur Mookerjee, Prankissen Chowdry, Kallykisto Chowdry and Obhoychurn Roy had come from Bally on that morning by the train. The cross-examination on this point by my friends was most severe, and this having utterly failed, they resorted to an application to the Court to add Mr. Bachelor, the Traffic Master, or one of his assistants, as a witness. I gave them every facility, and offered to admit in evidence any printed time-table of the Railway Company, or to procure one for them from my own house or the Bar Library. A witness *was* produced, and a time-table *was* put in evidence, but as my friend's defence is altogether *silent* on the subject, I must presume that the time-table confirms the evidence of my four witnesses.

I now pass over the details of the execution of the pottah. They are fresh in the memory of the Court,

and need no recapitulation. The draft had been carefully prepared, and several persons had been engaged in its preparation, or had perused it, or had it read to them. The stamps were brought;—no secresy had been observed; and I point to the publicity of the whole transaction, and the care with which it was conducted, and the number of persons engaged in it, as strong evidence of its genüineness and honesty. Had secresy been required, these were not the means by which it could have been attained. I shall presently contrast this part of my case with the detail given of the execution of Petumber's pottah.

I now call the attention of the Court to two points, which strongly indicate the genuineness of the prosecutor's pottah. It is alleged in the defence that it has been antedated. If so, the Dhurs have been guilty of forgery, for a man may be guilty of forgery by the fraudulent making of an instrument, though in his own name; for instance, if he makes a feoffment of lands to I. S., and afterwards a deed of feoffment of the same land to I. D., of a date prior to that of the feoffment to I. S., it is forgery. In addition to this, all the witnesses have become accessaries after the fact, and this will include Hurrychurn Dhur, the father of the Dhurs, and Hurryhur Mookerjee, the security of the prosecutor.

Now will it be believed that Hurrychurn joined in the commission of a crime like this, and that all his sons would have permitted him to join unnecessarily in

it, when his own act and the act of his two elder sons in executing and attesting Petumber's pottah (according to the defendant only two or three days before,) must have led to their inevitable conviction? Will it be believed that Hurryhur Mookerjee would have *attested* that deed, and thereby fix himself as an accessary to forgery? Or is it not much more probable that the deed being honest, and there not being any thing to dread, that the father of the Dhurs attested the act of his sons, and the security for the lessee put his name to the validity of the title? The security of honesty will account for the one, but unless fraud be the parent of insanity, the other is unaccountable. But if my friend's tale be true, that Rajkissen Mookerjee was at the bottom of the whole plot, then the argument becomes stronger, as it becomes more improbable, for in that case you would have a talented man and attached father offering up his eldest son, not on the altar of atonement, but a victim at the shrine of felony.

An additional piece of evidence, and of a confirmatory charactor, has now to be brought forward. It is an undoubted fact that three of the tenants of Mucklah did petition the Magistrate at Serampore against the oppressions of Joykissen in compelling them to sign their names, or at least to acknowledge their signatures to Petumber's pottah. Now if this be true, there is no escape for Joykissen; he is an accessary to the forgery, but the fact is denied by Oodob Sirdar and another whom the witnesses

named as compelling them to come before Joykissen. The question of veracity and the weight of evidence between the three witnesses and the two who contradicted them, I will try by the following test :—Assuming, for the sake of argument, that the prisoner's two witnesses did compel Rameshur Ghose and the others to appear before Joykissen, it would follow of course that these two men would deny that they have been guilty of those illegal acts, and that the influence of Joykissen which had prompted the commission of the offence, would be equally powerful in procuring the denial; and there can, therefore, be little or no dependence on their present statement. I must also observe that this statement is not supported by any collateral evidence, which is an unaccountable *hiatus* of proof, when the transaction occurred in Joykissen's own house. Having thus shown that their evidence is, under these circumstances, of the most doubtful nature, I now put it to the test of another very fair proof. If the Court do believe the fourteen witnesses, or any *one* of them, as to the non-execution of Petumber's pottah, then can there be any doubt but that these three witnesses, Rameshur and the others, have sworn truly; and that in order to support the forgery, they were dragged in as they have described, and their names were put to the forged instrument? Their statement is supported by the fact of their having petitioned the Magistrate, to which it is objected that the petitions were not put in immediately, nor until

some days after. Now, which of these two alternatives is the most likely to be true? That these ignorant men should take some days to present their petitions; or that within this short period of time, the whole transaction of Petumber's pottah should have been discovered by Hurryhur Mookerjee; that he should have matured a plot to defeat Petumber's pottah, and have got hold of and corrupted these three men to deny their signatures and file false petitions? Which, I say, is the most likely, that the filing of the petitions should take a few days, or that an intricate plot should be concocted and matured in a period so short for such a purpose? If the petitions were true, the transaction was simple, and had no impediment but the ignorance of the petitioners; but, if not true, then a complicated plot, involving the bribery of some and the connivance of many, had to be matured and achieved. I put the alternatives of the truth or falsehood of these petitions in the scale of common sense; and with great submission to the Court, I declare it to be my honest opinion, that the balance will turn against Joykissen. But another point still remains. A witness, Lokenauth Roy, swore that he had made fair copies of these petitions from the original drafts prepared by Rajkisto Mitter, (who I admit is the mooktear of Rajkissen Mookerjee,) and that he was paid two rupees for his work, by deducting the amount from fees which he had received on the joint account of himself and Issen, a son of Rajkisto, to bring the matter to a test. I called into Court both Rajkisto

and Issen, and who were identified by Lokenauth, the one as the man who had given him the draft to copy, the other is the man from whose fees he has deducted two rupees. Now Rajkisto was subsequently examined, and positively denied that he had ever drafted the petitions, or given them to Lokenauth to copy. Here is oath against oath.

My friends in their defence have laid great stress on the stamps having been purchased in Calcutta, instead of having been bought at Ooterparah or at Hooghly; but I am unable to see how this can become an important question in a case where every thing appears to have been done openly, and no attempt made at concealment. There was a reason (though a very slight one) for not purchasing them at Ooterparah; as the stamp vendor was a servant of Joykissen and kept the shop at his house; and it is also said that there was no stamp of that value to be had at Hooghly without waiting for some hours. A mere accident might have been the cause of the stamp having been purchased at Calcutta; but, put it which way you will, I do not see how the real merits of the question are in any way affected by the purchase of stamps at one shop instead of another; when it is quite clear from the dates, that they must have been purchased some days before the execution of the pottah. I can understand why my friends have dwelt so much on this point; it may help to draw off the attention of the Court from the suspicious circumstances which attach to the stamp paper on which

Petumber's pottah was written, and on which I shall have to comment.

I have now gone in detail through what I consider to be the principal important points for the prosecution, and the evidence by which these points are supported; and I will briefly sum them up at the conclusion of this address.

I now call the attention of the Court to the defence which has been set up. Two most striking features are, that all the Dhurs have positively denied any previous knowledge of Petumber; and that Joykissen endeavours to separate his own case from that of the other prisoner. Mr. Peterson has stated that he contends for Joykissen's innocence, even though Petumber should be guilty, and that Joykissen knew nothing of the pottah until after its execution; yet Petumber is defended by Joykissen's counsel; and Tarrucknauth Ghose has sworn that he went with Petumber to Joykissen on the sixth of Bysack, and spoke to him about the izarah of 5 annas share, to which he said, "you had better take the izarah." Now it is established beyond all doubt, that more than two months before the execution of the pottah, Petumber had consulted Joykissen on the point, who had advised him to take the izarah; and how strongly does this attempt of Joykissen's to keep clear of Petumber contrast with the conduct of Hurryhur, who becomes security for Kallykisto and is a witness to his title deed, having nothing to conceal; but that was not the case

with Joykissen. Through the whole conduct of the case Joykissen has endeavoured to establish that he had nothing to do with Petumber; and the evidence of the witnesses has been shaped to foster that impression. Tarrucknauth is the relation of Petumber; and is also his gomashta, and was living with him at the time of the alleged execution of these instruments; yet he tells us, "I do not recollect whether Petumber was a principal gomashta of Joykissen's in 1264;" and immediately after he adds, "Petumber said that Joykissen being my old employer let me go to him and consult with him about the izarah;" and further on Tarrucknauth says, "I and Petumber went to Joykissen on the 6th of Bysack, and spoke to him about the 5 annas izarah, to which he said 'you had better take the izarah.'

These statements are not consistent, and bear the character of attempting to *conceal* a fact which could not be *denied.* I make these comments simply on the character which the statement evidently bears, as evincing an attempt to concealment. I deny that Tarrucknauth ever had that conversation with Hurrychurn, or that any thing ever passed between them regarding the pottah.

Another improbable part of Tarrucknauth's statement is, that he, while walking from Ishrah to Calcutta, should have accidentally gone in to the 5 annas cutcherry, and had this curious conversation with Hurrychurn, who is represented as complaining to

Tarrucknauth of the difficulties of collecting the rents of the 5 annas share. Tarrucknauth treats this complaint as a certificate of recommendation, and proposes the granting of an izarah to his friend Petumber, a Calcutta cloth merchant. Never was a negociation so oddly begun ; nor does the commicality deteriorate in its progress. Tarrucknauth was then a friend of Petumber, and Hurrychurn the manager of the Dhurs; yet both of them, without any reference to their principals, proceeded to arrange matters. They do not separate until they actually fix a day for a meeting at the Dhurs' house. Then, without any further communication, Tarrucknauth alleges that he and Petumber went to the Dhurs' house on the 2nd or 3rd of Bysack, and then it was agreed to meet at the 5 annas cutcherry on the 7th of Bysack, and there execute an amalnamah. It does not appear that this instrument was copied from any draft ; but a ryot, by the name of Madhub Mundul, was brought in by Hurrychurn, and he prepared it. We have then the story of its having been read, both outside and inside the cutcherry, and the planting of the bamboo; and is it not a suspicious circumstance that to the pottah which was subsequently executed there should be two marksmen among the attesting witnesses; and yet that Tarrucknauth, who was present, who could read and write, who had originated and completed the negociation, who was the friend, and was to be the future gomastah of Petumber for

this very property, should not have been a subscribing witness, nor even asked to become one? These remarks apply equally to the other instruments said to have been executed on the 18th of Assar. What is the reason, I ask, that, on the last, at all events, of these occasions, the most proper person to be the subscribing witness is cunningly kept back, and that too when recourse was obliged to be had to marksmen? And how does this contrast with the conduct of Hurrychurn Dhur and Hurryhur Mookerjee, the one the father and manager of the Dhurs, the other the security for the lessee, and both of them fearlessly put their names to the conveyances between the principals?

I will now comment, very shortly, upon the evidence of some of the witnesses for the defence. The first who was called by my friends was Bhogoban Mundul. He is not only a subscribing witness to the pottah, but also wrote the names of the marksmen Sreekisto Ghose and Modoosoodun Ghose; and at the very time he performed this act of kindness for Petumber he was in the service of Joykissen. Like most of the other witnesses to the pottah, he was accidentally going by when the pottah was executed; and was accidentally called in. Never was the chapter of accidents more happily illustrated than by the sayings and doings of the prisoner's witnesses in this case. Now Bhogoban, though residing at Mucklah, is in the service of Joykissen, and a mohurrir in his treasury; yet he did not know that

the name of Sreenauth Duth was merely *benamee* for Joykissen. This of course was mere accident. Neither did he see any of the rents of the 10 annas share come into the treasury. This must also have been accident. Neither did he mention to Ramjeebun, the Treasurer, in whose office he wrote, the execution of the amalnamah of which he had been told, or of the pottah to which he had been a witness ; and this I will likewise ascribe to accident, and it must also be an accident which made him a witness on two other occasions for Joykissen.

Another eminent witness, also conspicuous in the chapter of accidents, is Modoosoodun Ghose. He had also been accidentally washing his face, and was accidentally called in. He admitted that a suit had been brought against him, but by accident he forgot whether he won or lost it, or whether he paid or received the costs; but he did remember that on the day the amalnamah was executed, that Petumber told him that he was residing at Ooterparah.

I have already commented upon the evidence of Oodole Sirdar, who is in the service of Joykissen. The next witness is Harradun Mitter, whose evidence is utterly untrustworthy. He is the writer of the pottah, and seems to have been a sort of apprentice to one Nundo Mullick, who was a mooktear at Hooghly, and tdied hree or four years ago, since which he has done no business, and could not get employment. He says that Doorgachurn Sircar, a mooktear, gave him some-

thing, but he cannot say how much; and that Koroonaseendo Bannerjee, another mooktear, might have given him something; and he then says, "he did not give me once, but several times, and told the clients to give me something;" that Koroonaseendo was not the general mooktear of Joykissen, although he was then in the Court writing and working for him. He himself admits that he is the cousin of Onunto Mitter, who is the general mooktear of Joykissen at Serampore, and who also was in the Court-house, writing; so that every word the witness said was then taken down by his cousin, and also by his former employer, both mooktears of Joykissen, and then acting for him. From the origin and connections of this witness, I was well prepared to hear the account he gave of the part which he took in this transaction. He told us that he went from his lodgings at Hooghly to the house of the Dhurs on the 17th to witness the Ruth, that being the last day of the festival; and that being the third time only he had gone to the house of the Dhurs, the first being the first day of the festival. After some conversation with Doolall, Meglall, and Hurrychurn, but in which he *denied that the pottah was ever mentioned*, they invited him to accompany them; and accordingly, without knowing for what reason, he steps into a boat at 11 o'clock in the night, and rows away for Mucklah. Now will any man believe that this witness, under such circumstances, would have gone off at that hour of the night with persons nearly

strangers to him, without even ever asking the business on which he was going? Will any man believe that the Dhurs having such important business to carry out would have made no previous preparation for having the instruments drawn up; but, at hap-hazard, applied to a mere stranger to accompany them, without even telling him the purpose for which he was wanted? The climax of the story is the offer of a rupee for the job, and his boundless generosity in refusing the boon. The fact is, that this fellow never went to the Dhurs, never went to Mucklah, never wrote the pottah, never saw it executed; but being an unemployed apprentice, has been, not very adroitly, tutored by his mooktear friends, who were recording his evidence.

Now if my observations on these first four witnesses are correct, the defence of the prisoners is utterly destroyed; and with the exception of one wretch, whom I have kept as a *bonne bouche*, I should not feel myself justified with detaining the Court any longer, but leave the Judge to his own vivid recollection and accurate notes.

The animal whom I must now gibbet is Takoordoss Hauttee, and he was called to prove the most important piece of evidence in the whole case for the defence. Could it have been established that Doolall Dhur had really gone to Serampore on the 18th, and been present at the registry of Petumber's pottah, there could have been little doubt but that

Doolall and his brother had executed that pottah. An attempt was therefore made to establish this fact, and to prove it. Takoordass Hauttee was called, and he stoutly swore that he saw Doolall in front of the room in which the amlah of the registry sat. On cross-examination, the following horrible scene actually took place. I asked the man if he had not given his evidence in the Moonsiff's Court for Joykissen in the month of Maugh last, barely three months ago? and his answer was, "he could not recollect." I then caused his deposition to be read to him word by word, and questioned him whether he had or had not made the statements in each paragraph? Again he replied "he could not recollect." I then asked him as to the substantive facts set forth in each paragraph, *viz.*, whether he was not then a boatman in the service of Joykissen, whether he had not been eight years in his service, and whether, during that period, it was not true that he had no other means of livelihood? *He could not recollect.* My friend Mr. Newmarch, with a most unhappy exercise of his skill in re-examination, repeated all my questions, which immediately restored the witness to his memory, and he admitted all the facts contained in his deposition, and thus establishing that the witness was as unquestionably a perjurer as he was a creature of Joykissen's. Now this is the man who has been put forth by Joykissen to establish the most important point in the case. I hope the Court will bear in its recollection my application to have this

witness committed for perjury. Can any man believe that this witness came forward of his own accord, or that any person but Joykissen has sent him into this Court? A clearer case of subornation of perjury by Joykissen Mookerjee I have never met with in the course of a long life spent in Courts of Justice; and this I know, that it is only the guilty who resort to subornation.

One man, Denonauth Sircar, was called to support the last witness, and he was the mooktear who must have brought him to the Court at Serampore. His evidence was not only complete, but too complete, as the evidence of every mooktear generally is. He not only knew Doolall before, but got him into conversation then, and Doolall in a most accommodating manner communicated to Denonauth the whole of the business which brought him to the Court. But here, unfortunately, strong grounds of suspicion peep out. The only one of the large Dhur family who attended the registry was the *dead* man; the only one of that *family* to whom Denonauth spoke was the dead man; the only one in the family with whom Denonauth was acquainted was the dead man: the dead could not speak for himself. The story is so framed that the living cannot contradict him.

Finally, why has not the mooktear, Moheschunder Chuckerbutty, who registered Petumber's pottah at Serampore, been called? He could have proved that Tarachand Koileah, and Rameshur Ghose were not

personated before the Registrar, but gave their evidence themselves; and *he* was likely to have proved the presence of Doolall Dhur, which would have been communicated to him; and above all, where is Petumber's security, Issen Ghose? If such a man ever existed, he ought to be a man of substance and respectability, and could have spoken to important points; yet they have not even attempted to account for his and the mooktear's absence; and the inference must be, that Issen Ghose, like the transaction, is a mere fiction. On this point I will quote what Mr. Starkie says—

"The conduct of a party in omitting to produce that evidence in elucidation of the subject-matter in dispute, which is within his power, and which rests peculiarly within his own knowledge, frequently affords occasion for presumptions against him, since it raises a strong suspicion that such evidence, if adduced, would operate to his prejudice."

There is only one more point to which I will refer the Court, and which it can decide by actual inspection. Joykissen is in possession of the pottah of the 10 annas share, and if Petumber's pottah be compared with it, the one will be found to be nearly the copy of the other; but subsequent to the execution of Joykissen's pottah, and prior to the execution of Petumber's, the *neyum-puttro* had been made, under the authority of which Petumber's pottah ought to have been executed, as is recited in the pottah itself; and yet by comparing the *neyum-puttro* with Petum-

ber's pottah, there are glaring differences which clearly establish that the concocters of the pottah had not access to the *neyum-puttro*, but had been compelled to take Joykissen's pottah as their guide. The documents are all in Court, and the comparison can be easily made.

I had nearly forgotten the extraordinary story which has been set up regarding the stamps which were procured for Petumber's instruments. They were three in number; one for the pottah, one for the kuboolyut, and the third for the zaminamah. As the time and place had been fixed some days before for the execution of these instruments, it is most unaccountable that the indispensable stamps should have been forgotten by all parties. More than two months before an umalnamah had been given, the 18th of Assar had been fixed for the execution of the pottah; yet all the parties assemble, and no stamps are forthcoming. About daylight in the morning, Doolall and Petumber are despatched to the stamp vendor, who has his shop at Joykissen's house, three quarters of a mile off. Tarrucknauth, the gomashta elect, is of course not sent, for that very reason, perhaps, which may account for his not being a subscribing witness. He would have been the proper man to represent his master; and if it was necessary to employ two persons in a matter of such importance as purchasing stamps, it would have occurred to an ordinary mind, that the man whom the Dhurs had brought to write the pottah, Harradun Mitter, might

have represented them. But no. The business of buying stamps is too delicate to be entrusted to any but principals; and Petumber the prisoner, and Doolall the dead man were selected, as I believe, for the purposes of this case; and Nobokisto Roy, the pluralist, who is stamp vendor to Government, and Khazanchee to Joykissen, can give his evidence, fearless of contradictions from the cross-examinations of any co-witnesses whatever. The selection has been artfully made, but art may be too transparent. My friend has dwelt on Nobokissen's pulling the strings for the puppets, but has Joykissen not pulled the strings for these *puppets?* "I thank the Jew for teaching me that word," so runs the "tale," but then it goes on, and we learn that, early as the hour was, the stamp vendor was at his work, nay more, he had not only already supplied four persons, but after selling these three stamps, his labors for that day terminated. This story is most suspicious. They would have the Court believe, that about six o'clock in the morning 24 stamps were sold, and not one after during the day. Now these three stamps for Petumber *may* have been sold on that day, but all the probabilities are that it was at a very much later hour they were sold. Nobokisto says that Doolall told him to enter the stamp for the pottah in his name, and that he did so; but yet he has endorsed the stamped pottah in Petumber's name. Doolall's name does not appear. There is the pottah before the Court, and when shown to the witness he says, "I cannot account for it." Very satisfactory

to me, but is it so to my friends? Now let me sum up the leading points of this monstrous story. The parties are by pre-arrangement assembled, but the indispensable stamps are forgotten. The gomashta and the writer are spared all trouble, and the two principals trudge forth on the errand. Early as the hour is, the shop is ready open, and its day's business terminates. The record on the stamp belies the instructions given—and the facts deposed to—the business is transacted in Joykissen's house, and the solitary witness to the sale is now, and has been sixteen years, in Joykissen's service. Here are improbabilities, here are contradictions; and yet if the tale be untrue, the whole performance at the cutcherry must be a farce.

My friend Mr. Peterson has indulged much in vehement attacks on Rajkissen Mookerjee. He has also gratified himself by eulogistic panegyrics on his client Joykissen. In point of fact, neither the eulogies nor the panegyrics can possibly be evidence in this case. Now to prove that I am correct, I will suggest to the Court something which I am willing that it should believe perfectly imaginary.

Suppose I should tell the Court that Rajkissen Mookerjee had been employed in a high situation in the Commissariat; and had actually been overwhelmed with certificates from Officers in Her Majesty's Regiments, and at this moment bore a magnificent gold chain and medal presented to him in testimony

of his integrity; and although this very chain was lying before me on this table, my friend Mr. Peterson, notwithstanding his eulogies on Joykissen, would declare that neither certificates nor chain was evidence. My friend would also object to my meeting his studied eulogies on Joykissen, by telling the Court to refer to the records of the Collectorate of this Station, and then ascertaining who was the Joykissen Mookerjee who was dismissed from the situation of Keeper of the Records, and rendered incapable of ever serving the Government again? I feel confident that my friend would object both to the chain before me and the order in my hand, and I merely allude to them because he himself has set the example.

I will now briefly sum up the whole case, 1*st*, as relates to the prosecutor; 2*ndly*, as relates to the prisoners; and 3*rdly*, as to those probabilities which, despite positive swearing, are the best guides to the goal of justice.

In regard to the tale of the prosecutor, I appeal to the judgment of the Court on the probability of the origin of the prosecutor's lease. The Dhurs had leased two-thirds of their property to the Sir Giles Overreach of Ooterparah. They were smarting under the consequences; they went to Hurryhur Mookerjee, the son of his hostile brother, as a harbour of refuge. He took upon himself their defence, on the condition that his relative and dependant should have the profit of the lease; and he manfully came forward as his security, and became the subscribing witness to the

documents, while his own people were employed in their preparation. Secresy was not sought, for crime was not contemplated. Now contrast this with the conscious cunning of guilt. Does Joykissen support Petumber? No, he shuns him through every stage of the proceeding, and tells the Court, through Mr. Peterson, that the case is, that though Petumber may be guilty, yet Joykissen is innocent; and this is declared by Mr. Peterson, the counsel for Petumber. Is it not the old farce of two faces under one hood?

Then again see how the execution of our pottah is supported by the open and elaborate care which preceded its execution. It was in the house of the Dhurs where it was executed, and that at mid-day, and not at a straw cutcherry, at an hour which must have disturbed the bats; and even the stamps were purchased so early that the owls had scarcely retired to rest. The Court will see that this alludes to the difference in the probabilities between the stories of the prosecutor and the prisoners.

Again let the Court remember, that, if only *one* of the fourteen persons who swear they were present at the execution of the prosecutor's pottah is believed, then his oath completely negatives the execution of the pottah by the Dhurs to Petumber. I now turn to the case set up for the defence. Have not the whole Dhur family positively denied ever having had any previous knowledge of Petumber Bose? Who is he? What is he? Where is his surety? All we know of

him is, that he is an old servant of Joykissen. A ludicrous story is set up of his being a cloth merchant, and wishing to commence a trade of gunny cloth at Mucklah. The only evidence of this is some casual conversation said to have occurred two years and a half ago with a ryot while smoking a pipe with a perfect stranger to him, and which ryot happens to be a tenant of Joykissen's 10 annas share; and also the alleged conversation with Hurrychurn of Tarrucknauth Ghose, who could arrange the cloth trade, but would not witness the deeds or purchase the stamps.

Then again let me point to the ridiculous story of the assemblage at Mucklah on the 7th of Bysack and 18th of Assar. The climax of the lies being the purchase of stamps. Then where is the security man, Issenchand Ghose? He, a most important man in the transaction, has never been produced. Does he really exist, or is he the son of Mrs. Gamp's friend, Mrs. Harris, who has been made immortal by Charles Dickens? Where also is Moheschunder Chuckerbutty? He could have cleared up the most suspicious point in the case for the prisoners, and have refuted most important points in support of the prosecution?

I here stop. and with these remarks leave the case to the Court.

LONGUEVILLE CLARKE.

CALENDAR N°. 1, OF FEBRUARY 1861.

(Committed by the Magistrate of Serampore.)

QUEEN AND KALLY CHURN *alias* KALLYKISTO CHOWDRY, *Prosecutors*,

versus

1st.—JOYKISSEN MOOKERJEE,
2nd.—PETUMBER BOSE, } *Defendants.*

Count No. 1.—The forging of an izarah pottah of ⅓rd share of village Mucklah.

Count No. 2.—The registering of the above pottah, in the Register's Office, at Serampore, on the 2nd day of July 1860, knowing the same to be a forged one.

Count No. 3.—The causing of the above pottah to be forged by the defendant No. 1.

Whereas the requisite investigations and inquiries regarding the case have been come to a close—

Ordered.—That the opinion of the Law Officer be called for, dated 4th May 1861.

(Sd.) J. E. L. LILLIE,
Addl. Sessions Judge.

FUTWA OF THE MOULAVEE.

THE following are the circumstances of the case:—That Doolall Churn (deceased), Meglall Dhur, and Sibchunder Dhur, the proprietors, have denied, the first before the Magistrate's Court, and the last two, in their respective depositions, the leasing to Petumber Bose of an izarah pottah of ⅓rd share of the village Mucklah. They allege also that previous to this, the defendant No. I having, in the name of Sreenauth Dutt, taken an izarah pottah of 10 annas share of the above village of Mucklah for a term of ten years, practised oppressions, exactions, and other mischiefs, on account of which they assembled all together in their house at Chinsurah, and on the security of Hurryhur Mookerjee, executed, on the 18th Assar 1267 B. S., an izarah pottah in favour of Kallykisto Chowdry, prosecutor, of the remaining 5 annas share of the village Mucklah, for 10 years; and whilst having the above document registered in the Register's Office at Hooghly, which was close by, the defendant No. II put forth a claim, to the effect of his having taken an izarah of the above 5 annas for himself, the deed whereof was alleged by the proprietors to have been fraudulently registered in Serampore some time before.

Hurrychurn Dhur, Hurryhur Mookerjee, Prankisto Chowdry, Benodebeharry Sircar, Moheschunder Nundy, Obhoychurn Roy, Bhoyrubchunder Doss, and Bhojohurry Mitter, witnesses of the pottah, for the prosecutor Kally Chowdry, declared, with the exception of Hurrychurn Dhur, in their respective depositions, that they arrived at the Dhurs' house in Chinsurah, some by the train and others by boat, and that at 1 o'clock of the 18th Assar 1267 B. S., the proprietors having assembled all together, executed and granted, on the security of Hurryhur Mookerjee, an izarah pottah of the above-mentioned share to Kallykisto Chowdry, prosecutor, for a term of 10 years, and in the presence of all subscribed their respective names to the above pottah. They also allege that, agreeably to the consent of the minor Shamchund's mother, Sreemutty Soorjomony Dossee, Meglall Dhur signed her name for her, as also he signed Lokenauth Dhur's name in the same pottah. Further, they depose that Sheebnauth Roy, a pleader in the Judge's Court at Hooghly, corrected the draft of the above izarah pottah, and that there being no stamp paper of the value of Rupees 12 in the stamp vendor's store in the Hooghly Collectorate, Prankisto Chowdry, witness, purchased the stamp papers for the pottah, &c., from Calcutta, Burra Bazar. It has been already proved what Aumirto Laul has stated in his deposition, that there was no stamp of the value of Rupees 12 in his store from June 7th 1860 to the 30th idem. It has been also proved what Gopalchunder,

apprentice to Sheebnauth Roy, has said in his deposition, that some two or four days after the 1st Ruth festival, pleader Sheebnauth Roy drafted the above izarah pottah, and that he copied it fair. The defendant No. I in his defence denies any participation in the forgery of Petumber's pottah, and alleges that, animosity existing between himself and Rajkissen Mookerjee and his son Hurryhur Mookerjee, the latter have got up the case solely to throw him into difficulties by linking him with it, and that he, the defendant No. I, only to save his life, has been compelled to take the management of the case upon himself. The defendant No. II in his defence, denying the charge contained on the counts, avers that Tarrucknauth Ghose, his relative, having come to terms with Hurrychurn Dhur about 5 annas izarah of Mucklah, informed the defendant No. II of the same, and he and Tarrucknauth next proceeded to the Dhurs' house at Chinsurah, and settled with them on an annual *jummah* of Rupees 902 for the above share, and whilst returning they came to Ooterparah, the defendant No. II to his old employer, defendant No. I, and informed him of the matter; and when he gave his consent, the defendant No. II paid a *salamee* of Rupees 200 to Doolall Churn and Meglall Dhur, and got an umalnamah from them, executed on the 6th Bysack, Doolall and Meglall putting him in possession by the fixing of a bamboo, and which possession he has retained up to that time. Issen Chunder, the security, having been

sick at the time, the pottah and other documents relating to the izarah were not written then, but afterwards. Doolall and Meglall, taking in company the witnesses Hurry Churn Dhur and Harradun Mitter, went in a boat from Chinsurah, after the 2nd Ruth festival, and reached the cutcherry of Mucklah at 11 o'clock in the night, when immediately they showed to the defendant No. II the draft of the above pottah; and on the next morning purchased stamps from Ooterparah, and on the security of Issen Chunder Ghose, executed on that very day (morning) the 18th Assar, at 7, a pottah for the term of 10 years, in the presence of Harradun Mitter, Tarachand Koileah, Rameshur Ghose, Hurry Churn Dhur, Bhogoban Mundul, and Kisto Ghose, witnesses, and put in their own signatures, as well as those of the other co-sharers, to the pottah, &c., and had the deeds registered at Serampore. The circumstance of the above pottah having been written in the stamp bearing the name of Petumber on the endorsement, is alleged to have been a mistake. Defendant No. II produced Bhogoban Mundul, Harradun Mitter, Kisto Ghose, Modoosoodun Ghose, and other attesting witnesses of his izarah pottah, and had their depositions taken. Although such be the nature of the defence set up, yet five of the witnessses of the izarah pottah of defendant No. II, namely, Tarachand Koileah, Rameshur Ghose, Kisto Ghose, Modoosoodun Ghose, and Hurry Churn Dhur, having attested the izarah pottah of defendant No. II, and out of them Tarachand Koileah

and Rameshur Ghose depose that defendant No. I, Joykissen Baboo, having had them brought by the end of Assar, some two or three days after the 2nd Ruth festival, to Ooterparah, by means of two of his Nugdees, compelled them to attest the izarah pottah of defendant No. II, which attestation was therefore involuntary. Further, they state that the proprietors of Mucklah were not present there at the time, and that after the above attestation they were made over in charge of his (defendant No. I) Nugdee and Kisto gomastah, and sent in his own carriage to Serampore, to attest the registering of the forged izarah pottah; but on their representing that they would speak the truth, the above Kisto gomastah did not take them to the Registry Office, but let them sit by the *jhow tree*, and taking two other witnesses to the Registry Office, discharged them from the custody of the Nugdee. Their non-appearance before the Court, they allege, was owing to their dread of defendant No. I, and that when a *jemadar* was stationed at their village, they appeared at Serampore. Witnesses Modoosoodun Ghose and Kisto Ghose depose, the defendant No. I, having summoned them to Ooterparah by the end of Assar, some three or four days after the 2nd Ruth festival, by means of his Nugdees, and told them that an izarah has been taken in the name of defendant No. II, of 5 annas share of Mucklah, required them to attest the document as witnesses, upon which they brought the excuse of the non-presence of the proprietors at the

time, and refused to attest the document by marks, on which defendant No. I threatened to oust them from their abode. Witness Hurrychurn Dhur, looking at the pottah of the defendant No. II, deposes that the signature which the document bore was not his, and that *Dhur* was written in the place of *Dhâr;* and though defendants Nos. I and II acknowledge that Kisto Ghose and Modoosoodun attested the pottah of defendant to No. II, and had two other witnesses of the same names to depose; yet the very two witnesses declare, that in the pottah of defendant No. II, their names were put in by Madhub Mundul, and that they touched the pen only; but the same Kisto Ghose, when executing a deed of sale, in favour of Tarrucknauth Chatterjee, attested that document with his own signature, which is in the records of the Registry Office; and witness Modoosoodun Ghose, when sued by Ramrutten Ghose for debt on a bond, said, in reply to the above suit, that the signature which the above bond bore was written by Rameshur Chatterjee guiding his hand. On inspecting the above deed of sale and the authenticated copy of the defence above alluded to, it appears that these witnesses can read and write, and therefore the evidence borne by them in this case is altogether false. Excepting the witness Harradun Mitter, the witnesses of the No. II defendant's izarah pottah, namely, Bhogoban Mundul, Modoosoodun Ghose, and Kisto Ghose, and the witness of the defendant No. I, namely, Ragub Mundul, Issur Mundul, Kisto Gomastah, Kalachand Ghose, and

Poran Ghose, are all the ryots of defendant No. I, and two of them are his gomastahs. To this fact there cannot attach the least doubt. The evidence, therefore, borne by such witnesses for the defence cannot be relied upon by the Court. The discrepancies manifest in different places in the depositions of the witnesses for the defence, and which have been brought to light in the course of their cross-examinations by the counsels, utterly invalidate their evidence.

Whereas from the defence of the defendant No. II, and the evidence borne by the witnesses for the defence; from the depositions of the proprietors of the 5 annas share above referred to, and the evidence of the witnesses for the prosecution; from the perusing and hearing of the documents filed by the prosecutor; from the circumstance of the case and the inspection of the forged pottah; from the defendant No. I having in the name of Sreenauth Dutt an izarah pottah of 10 annas share of the above village Mucklah from before; from the oppressions and exactions of the defendant No. I, the proprietors refusing to give him izarah of the remaining 5 annas share, and in lieu thereof giving the same to Rajkissen Mookerjee and Hurryhur Mookerjee in the *benamee* of Kallykisto Chowdry; from the last mentioned circumstance defendant No. I feeling his interests prejudiced; whereas from all the above circumstances it is quite manifest that defendant No. I, making some of his own ryots of Mucklah witnesses, has forged the izarah pottah in the name of defendant No. II. The

charges contained in the counts 1st and 2nd of the Calendar have been perfectly established against defendant No. II, and that in the count 3rd of the same Calendar against defendant No. I. Whereupon the defendants deserve to be visited with the penalty the law inflicts for forgery. I submit this my opinion to the consideration of the higher tribunal.

COPY No. 59.

FROM J. E. S. LILLIE, ESQ.,

Additional Sessions Judge of Hooghly,

TO THE REGISTER TO THE COURT OF NIZAMUT ADAWLUT, FORT WILLIAM.

SIR,—I have the honor to transmit herewith, to be laid before the Nizamut Adawlut, the proceedings on the trial noted in the margin, held by me at the Station of Hooghly on the 30th March, and 1st, 2nd, 3rd, 4th, 5th, 6th, 8th, 9th, 10th, 13th, 15th, 16th, 17th, 18th, and 27th April, and 4th and 6th May 1861.

Additional Sessions Judge's Court, Zillah Hooghly.
Trial No. 3 of May 1861.
Case No. 1 of February 1861.
Government *versus* No. 1, Joykisto Mookapadhya, son of Jogomohun Mookapadhya, and No. 2, Petumber Bose, son of Kisto Chunder Bose.
Charge 1st. Against both fabricating a pottah.
2nd. Uttering the above.
3rd. Against No. 1 causing or procuring the forgery of the said pottah, perpetrated on the 2nd July 1860, apprehended on the 11th and 12th of February 1861 respectively.
The prisoner No. 2 is in jail, and No. 1 is on bail.
Committed for trial by Mr. J. P. Grant, Joint Magistrate of Serampore, on the 23rd of February 1861. Futwa for convi[illegible]

2. The Dhur family are the sabaits or trustees of an endowment to which Mucklah, a dewutter mehal, appertains.

3. By the terms of a written agreement, or *neyum-puttro* Doolallchurn Dhur and Meglall Dhur were constituted superintendents (Oddoko), and vested with the general management of the endowment; but in the agreement it was stipulated, that in important matters—in granting leases and the like—they were bound to consult the other co-sharers, their brothers and cousins, before executing engagements which were then to be signed by the superintendents for themselves and co-sharers. This *neyum-puttro* is dated 9th January 1860 (26th Poos 1266 B. S.), and was registered at Serampore, within the limits of which Sub-Division Mucklah is situated, on the 21st May 1860 (9th Jeyt 1267).

4. At the end of the Bengalee year 1267, before the present dispute arose, Joykissen Mookerjee, one of the prisoners now under trial, was in possession of a share of Mucklah, consisting of two-thirds or 10 annas 13 gundas 1 kowree 1 krantee as renter Izardar benamee, in the name of Sreenauth Dutt, under the Dhurs, and the remaining one-third share, or 5 annas 6 gundas 2 cowries 2 krantees, was khas tossil.

5. There does not appear to have been any division or partition of the two shares, but gomashtas of the renter and of the proprietors (the Dhurs) occupied separate, though adjoining cutcherries, in which they collected the quotas of their respective masters. The present dispute relates only to the smaller of the two shares.

6. On the 2nd July 1860, (20th Assar 1267,) a deed of lease, or izarah pottah, of the smaller share, purporting to have been granted on the previous 30th June (18th Assar) by Doolallchurn Dhur and Meglall Dhur on behalf of themselves and their co-sharers, to the prisoner Petumber Bose, was registered at Serampore. On the 4th of the same July, a deed of lease of the same share, purporting to have been granted on 30th June by Doolallchurn Dhur and Meglall Dhur and the other co-sharer, to the prosecutor Kallykisto Chowdry, was registered at Hooghly. At the time of the presentation at the Hooghly Register's Office of the deed last described, its registration was opposed by a petition on behalf of Petumber Bose.

7. On the 10th July a petition was presented at Hooghly by the Dhurs, in which they affirm the genuineness of that lease to the prosecutor, and in which they repudiate the alleged lease to Petumber Bose. This petition was transferred to the Joint Magistrate of Serampore, by whose order Petumber Bose alone was summoned as a defendant.

The complicity of Joykissen Mookerjee in the alleged forgery is asserted in the original petition of the Dhurs.

8. On the 3rd August Petumber Bose appeared before the Joint Magistrate, and presented a petition, affixing the genuineness of the lease to him, and produced the pottah on which the charge of forgery is founded.

9. On the 9th November the Joint Magistrate, without pronouncing any decided opinion touching the guilt or innocence of Petumber Bose, struck the case off his file. On the 21st January, on appeal, the Sessions Judge remanded the case, in order that Petumber Bose might either be committed or absolved from the charge. The present commitment is the result of the Joint Magistrate's proceedings on the remand.

10. Counsel learned in the law have appeared during this trial, Messrs. Longueville Clarke and Goodeve on the part of the prosecution, and Messrs. Peterson and Newmarch on the part of the prisoners.

11. According to the evidence for the prosecution, the Dhurs held no communication with either Petumber Bose or any one on his behalf regarding the lease. They did not execute the pottah in his favour, but on the contrary. On the day they are said to have executed that pottah at Mucklah they were at their house at Chinsurah engaged in executing the rival pottah in favour of the prosecutor.

12. This part of the prosecution is supported by the deposition before the Joint Magistrate of Doolallchurn Dhur, who has since died, taken in the presence of Petumber Bose, wherein he asserts the falschood of the alleged engagement with that prisoner and the truth of the engagement with the prosecutor; by the evidence of Meglall Dhur, who identified his signature upon the pottah to the prosecutor, and who denied what purports to be his signature on the pottah and

other deeds produced by Petumber Bose ; by the evidence of Hurrychurn Dhur, the father of the Dhurs, named above, who acted on behalf of his sons during the time of the khas tossil, as gomastah of Mucklah, who denies the genuineness of his signature as an attesting witness upon the pottah to Petumber Bose, and who identifies his signature in the same capacity upon the pottah to the prosecution; by Sibchunder Dhur, Denonauth Dhur, and Ramchunder Dhur, who affirm that they joined in executing the pottah to the prosecutor; by Hurryhur Mookerjee, the son of Rajkissen, (and the nephew of the prisoner Joykissen,) who deposes that he executed a zaminamah or security bond, for the rent of the lease to the prosecutor; by Prankisto Chowdry, Binodebeharry Sircar, Moheschunder Nundy, Obhoychurn Roy, Bhojohurry Mitter, who depose that they were attesting witnesses to the pottah to the prosecutor; by Gopaul Dass, who deposes that he was in the employ of Seebnauth Roy, a Vakeel of Hooghly, and that the draft of the above-mentioned pottah was revised at the lodgings of that vakeel; and by the prosecutor, who deposes to the truth of his claim.

13. To prove the charge against the prisoner Joykissen, the following evidence is adduced:—It appears that among the attesting witnesses of the pottah to Petumber Bose are the names of Tarachand Koileah and Rameshur Ghose, who wrote their own signatures, and of Kisto Ghose and Modoosoodun Ghose, who signed as marksmen. These four attesting

witnesses are stated on the pottah to be residents of Mucklah. Tarachand Koileah, Rameshur Ghose, Kisto Ghose, the son of Luckhun Ghose, and Modoosoodun Ghose, the son of Gopaul Ghose, all residents of Mucklah, have been now examined. Tarachand Koileah and Rameshur Ghose state, that about the 20th Assar they were taken into the presence of Joykissen, who directed them to sign their names as attesting witnesses to the pottah to Petumber Bose; that they refused, alleging, among other reasons, that the grantors were not present: that Joykissen by threats at length compelled them to sign their names; that he further directed them to be conveyed to Serampore to attest the registration of the pottah, and that, notwithstanding their remonstrances, they were carried off in a carriage to Serampore, but that they refused to appear before the Register. In the certificate of registration, endorsed upon the pottah, the names of these two witnesses appear as attesting witnesses before the Register of Deeds. Kisto Ghose and Modoosoodun Ghose state, that on an evening about the time indicated by the former witnesses, they were taken to Joykissen, who directed them to become attesting witnesses to the pottah of Petumber Bose; that for the reasons assigned by other witnesses, they refused, and that they went away without having assented to the proposal.

14. The evidence for the defence is entirely opposed to that for the prosecution. The Dhurs agreed to give the lease to Petumber Bose. Hurry-

churn Dhur, Doolallchurn Dhur, and Meglall Dhur came to Mucklah, and on the 7th Bysack 1267 (18th April 1860,) executed an *amalnamah*, or order of possession, in anticipation of the completion of the engagements, in favor of Petumber Bose. Possession has remained with him since that day. The *pooniah*, or annual assemblage of the ryots, was made by Tarruck Ghose, the gomastah of Petumber Bose, in the early part of the month of Jeyt. The pottah to Petumber Bose was duly executed by the Dhurs at the Mucklah Cutcherry on the morning of the 18th Assar, and was afterwards registered by them at Serampore.

15. Madhub Mundul, Rajkissore Mundul, and six other witnesses depose that they were present at the execution of the *amalnamah*. Tarrucknauth Ghose deposes that, as gomastah of Petumber, he held the *pooniah*; and he is corroborated in that assertion by seven other witnesses. Bhogoban Mundul, Harradun Mitter, Modoosoodun Ghose, son of Ramdeb Ghose, and Kisto Ghose, son of Sothrooghun Ghose, depose that they were attesting witnesses to the pottah to Petumber Bose; and Kisto gomastah of the larger share of Mucklah, and six other witnesses, munduls and ryots of Mucklah, depose that they were also present at the execution of that pottah. The following additional evidence has been adduced:—Rajkissen Mookerjee, a relation of both Joykissen Mookerjee and Rajkissen Mookerjee, deposes that he has a considerable holding in Mucklah; that he saw

Petumber Bose in possession of the cutcherry about the 10th or 12th of the last Bysack; that he, deponent, was told by Hurrychurn Dhur to pay his rent to Petumber Bose; that several ryots of Mucklah are in the service of Rajkissen Mookerjee; and that he, deponent, was informed by Rameshur Ghose that he had received a bribe of Rupees 100 from Rajkissen to present the petition to the Joint Magistrate of Serampore, which will be hereafter noticed.

16. Takoordoss Hauttee and Denonauth Mooktear depose that they saw Doolallchurn Dhur at the Serampore Registry Office on the day on which the pottah to Petumber Bose was registered.

17. Nobokisto Roy, the stamp vendor at Ooterparah, deposes that on the 18th of Assar he sold the stamps requisite for the deeds between the Dhurs and Petumber Bose to Doolallchurn Dhur and Petumber Bose.

18. Having briefly epitomised the most material part of the evidence adduced on both sides, it now becomes necessary to consider the value of that evidence.

19. The enquiry branches off into three great divisions; 1st, is the pottah of Petumber Bose a forgery?

2nd. Is the charge brought home to the prisoner Petumber Bose?

3rd. Is the charge brought home to the prisoner Joykissen Mookerjee?

20. In order to assist in determining the first question, it will be necessary to see who are the parties most interested in the rival leases. It seems clear from all the probabilities of the case, that the nominal prosecutor and Petumber Bose are alike tools. The Dhurs affirm that they were induced to give the lease to the prosecutor solely on the condition of Hurryhur Mookerjee being his security: It is quite certain that the large expenses of this prosecution must fall upon Hurryhur Mookerjee or his father. The story that their only motive is to assist a relative is incredible.

21. The learned counsel for the prisoners has argued that the profits of the disputed share afford a very inadequate inducement for his client, Joykissen, to wish to have it. It is more than probable that the profits of the lease formed but a small part of the inducement of either party. But it can be easily conceived that when Joykissen became aware that his relatives, between whom and himself there is proved to be such a wide breach, were about to intrude into Mucklah, he would be desirous to keep them out of it.

22. But while I am unable to turn away my eyes from the real litigants in this dispute, it must be understood that before a conviction can ensue, each link in the chain of evidence must be established by the clearest legal proof.

23. The first striking point is, that all the Dhurs who have been examined have repudiated the engage-

ment with Petumber Bose. Their statements in all essential points have been positive, candid, and consistent. In minor points there may have been variations, but the time which elapsed between their different examinations, and the searching and skilful cross-examinations to which they have been subjected, must not be forgotten.

24. Meglall Dhur has involved himself in contradictions on one point before the Joint Magistrate. He averred that his brothers had seen the draft of the pottah at the lodgings of the vakeel Seebnauth Roy. In this Court this circumstance had apparently escaped his recollection, and he answered accordingly ; and when the discrepancy was brought to his notice, he endeavoured to reconcile the conflicting statements by a silly explanation.

25. The learned counsel for the prisoner has endeavoured to impugn the credibility of the Dhurs on the ground that they have been bribed by the fine and enhanced rent of the putnee of Mucklah, which it is acknowledged that they have given to Hurryhur Mookerjee since the discovery of the rival leases. The transaction appears to have been undisguised, and whatever may have been the motives for giving such an increase, blame can scarcely be attached to the Dhurs for making the best bargain they could for their own interests. A bribe would have been paid in a less open and avowed manner.

26. In testing the genuineness of the pottah to Petumber Bose, the evidence of the attesting witnesses

is the next point to be considered. It appears that on the 14th July, after the case had been transferred to the Joint Magistrate of Serampore, Tarachand Koileah, Rameshur Ghose, and Kisto Ghose, son of Luckhun Ghose, presented petitions, wherein they asserted that they have been compelled to become attesting witnesses against their own consent. In February, upon the application of the prosecution, these three persons and Modoosoodun Ghose, the son of Gopaul Ghose, were made witnesses for the prosecution.

27. The learned counsel of the prisoners has called these witnesses by the designation of approvers; but the term is not appropriate. An approver is a defendant to whom a conditional pardon has been tendered; and these have been unconditionally released by the Joint Magistrate.

28. Two other persons, of the name of Kisto Ghose and Modoosoodun Ghose, have been examined for the defence, to prove that they were the attesting witnesses; but their testimony cannot be credited.

29. An instrument purporting to have been executed and signed by the last named Kisto Ghose himself was shown to that witness; and he was compelled to admit that he had written the signature himself; but he had recourse to the ridiculous explanation, that some one had guided his hand while he was writing the signature.

30. It appears from a decision of the Principal Sudder Ameen of Hooghly, dated 19th December

1843, Ramrutten Ghose, appellant *versus* the last named Modoosoodun Ghose, respondent, that the latter denied the genuineness of an instrument on the ground that his signature purported to be that of a marksman, whereas he can read or write. The Moonsiff dismissed the claim on that plea; but the Principal Sudder Ameen decreed it on reference to other instruments which had been signed by the respondent as a marksman.

31. It does not appear that the respondent was subjected to the simple test of being required to write his signature in the presence of the Moonsiff; and it seems scarcely conceivable that when detection was so easy, the respondent should have made a false assertion.

32. The inference I draw from the above decision is, that the Modoosoodun Ghose examined by the prisoners has made contradictory statements regarding the fact of his being able to write, and, therefore, that his evidence is undeserving of belief.

33. The learned counsel for the prisoners has commented upon the delay of these four witnesses in repudiating their attestation. Their conduct has certainly not been free from suspicion; but it can easily be imagined that, finding that the pottah was contested, they may have shrunk from the necessary consequences. A fact elicited by the cross-examination of Mr. Newmarch, one of the learned counsel of the prisoners, has satisfied me that the three attesting witnesses who petitioned the Joint Magistrate were not

prompted by the party of Rajkissen Mookerjee. It has been shown that a mookteear in the interest of that party took authenticated copies of the petitions of the three attesting witnesses after they had been presented; from which it may be fairly presumed that the petition could not have been dictated or instigated by that party. That Rajkissen's party may have afterwards made use of the information thus obtained, to further their own interests, is only natural.

34. It is difficult to conceive that if the Kisto Ghose and Modoosoodun Ghose examined for the prosecution had not really had their names written as subscribing witnesses to Petumber's pottah, that they should have come forward of their own accord. It must be remembered that they had no prospects, at the time they presented themselves, of being converted into witnesses. It seems improbable that they were then actuated by any other motives than to save themselves.

35. We arrive, therefore, at the conclusion that four out of six attesting witnesses to Petumber's pottah have repudiated their attestation. Of the two remaining witnesses, Bhogoban Mundul is a dependant of the prisoner Joykissen; and the whole statement of Harradun Mitter is so improbable that no value can be attached to it.

36. There is an incidental circumstance apparent upon the face of the pottah to Petumber Bose, apparently insignificant, but which in reality seems to me to betray the forgery. At the time of the lease

to Sreenauth Dutt Denonauth Dhur was a minor. In the *neyum-puttro*, executed before the date of the rival leases, it is casually mentioned that Denonauth Dhur has attained majority. It is almost certain that if the Dhurs had really executed the pottah to Petumber Bose, they would have designated Denonauth Dhur as a minor.

37. Another presumption of forgery is stated to be the signature of Hurrychurn as Dhâr instead of Dhur on the pottah of Petumber. It appears, however, that his signature upon the pottah to Sreenauth Dutt is written in the same manner, raising, perhaps, a suspicion that the more recent of the two signatures was copied from the older one.

38. There is one material fact inconsistent with the transactions of the Dhurs with Petumber Bose, as narrated by the witnesses for the defence. It is proved that the Dhurs collected a kist from the ryots of Mucklah after the alleged possession of Petumber Bose. The reason assigned for so unusual a proceeding is far from satisfactory, and a strong presumption is raised against the alleged possession of Petumber Bose before the 18th of Assar.

39. I entirely disbelieve the evidence of Takoordoss Hauttee and Denonauth Mooktear, who affirm that they saw Doolallchurn Dhur at the Serampore Registry Office. A perusal of the examination of Takoordoss Hauttee will show that he is not entitled to any credit.

40. It is very suspicious that the deceased Doolallchurn should be the only one of the Dhurs with whom Denonauth was acquainted.

41. I do not attach much weight to the testimony of the Ooterparah stamp vendor. He is private servant of the prisoner Joykissen, and may be doubted whether he was really acquainted with the deceased Doolallchurn Dhur.

42. Although the validity of the lease of the prosecutor is not now in issue, yet, as the truth or the falsehood of the one lease must stand or fall by the truth or falsehood of the other, it is impossible to exclude the alleged engagement of the Dhurs with the prosecutor from consideration.

43. The learned counsel for the prisoner has argued with the greatest ability and power, that the execution of the engagement with the prosecutor may have been correctly described by the witnesses for the prosecution, with this important exception, that the engagements were executed on a day after the 18th Assar, after the execution of the engagements with Petumber Bose.

44. After the fullest attention to the arguments of the learned counsel, I am unable to concur in this view. There is certainly one suspicious circumstance connected with the engagements with the prosecutor, and that relates to the purchase of the stamps on which they were engrossed.

45. The account given for the prosecution is this: Prankisto, a dependant of Rajkissen Mookerjee, was directed by Hurryhur Mookerjee to procure the stamps. Prankisto proceeded from Ooterparah to Hooghly with the intention of purchasing them from the Collectorate vendor, by whom he was informed that there were no stamps of the value required in his custody. Thereupon Prankisto proceeded direct to Calcutta, where he purchased the stamps in the Burra Bazaar.

46. In order to ascertain the truth of Prankisto's assertions with respect to the stamps in the Hooghly vendor's custody, I have examined the Collectorate accounts. It is literally true, as stated by Prankisto, that the vendor had no stamps of the value of Rupees 12, the amount required at the time in question: but it appears further that there was an abundance of stamps of that value in store in the Collectorate; and the vendor would not have encountered much difficulty or delay in getting them out.

47. The endorsement on the stamps on which the engagements with the prosecutor were executed purports to show that they were sold on the 14th Assar, the purchasers' names not being mentioned.

48. It certainly would have been more satisfactory if the stamps had been sold in the Hooghly district; but it is quite possible that Prankisto, on discovering that there would be some delay at Hooghly, may have determined to proceed to Calcutta.

49. The learned counsel for the prisoners dwells upon variations in regard to dates in the respective statements of Hurryhur and Prankisto concerning the purchase of the stamps; but Prankisto more than once affirmed that he was quite unable to remember the exact date on which the purchase was made.

50. The prisoners have examined witnesses, ryots of Mucklah, to prove the various transactions of the Dhurs with Petumber Bose, and the possession of the latter for a considerable period before the 18th Assar. This evidence has an appearance of strength and credibility; but it must not be forgotten that Joykissen must, from his position of izardar of Mucklah, have been possessed of considerable influence therein.

51. Reviewing all the circumstances and probabilities of the case, I am unable to come to any other conclusion than that the pottah of Petumber Bose is a forgery.

52. Having arrived at this conclusion, the guilt of the prisoner, Petumber Bose, seems to follow as a natural inference. He has throughout avowed his share in the transaction, his participation in the execution of the lease, and in the registration of the deeds. The pottah was produced by Petumber Bose, affording, it may be contended, some presumption of innocence.

It is clear, however, that, assuming the engagements with Petumber to be forgeries, they must have been committed with the rival lease, and with the intention of beating down opposition, though, perhaps, the early

and determined prosecution in a Criminal Court was not anticipated.

53. The guilt or innocence of the prisoner, Joykissen Mookerjee, is the last question to be determined. The evidence against him is confined to the statements of Tarachand Koileah, Rameshur Ghose, Kisto Ghose, and Modoosoodun Ghose.

54. The conversations which they relate between themselves and the prisoner are very improbable. These men were not essential witnesses—any other men would have done equally well; and it cannot be believed that, as stated by Tarachand and Rameshur, they refused to accede to the prisoner's proposals, and that he nevertheless insisted upon having their signatures and in running the risk of immediate detection by sending the Register of Deeds.

55. The assertion of the other two witnesses that they were first made as attesting witnesses, and that their consent was asked afterwards, cannot be credited.

56. It is not improbable that these four witnesses were willing and consenting witnesses; that two of them voluntarily appeared before the Register of Deeds; and that events having taken a turn which was not expected or desired, the witnesses were glad to endeavour to save themselves by showing that they had acted under restraint.

57. These witnesses having indubitably mixed up some falsehoods with what I cannot help believing

to be some truth, and looking at the family feud and the cases which have arisen out of it, so much of reasonable doubt has been raised as to require that the prisoner should have the benefit of it,

58. The Futwah of the Mahomedan Law Officer convicts the prisoner Petumber Bose on the 1st and 2nd counts, and the prisoner Joykissen Mookerjee on the 3rd count, and declares them both to be liable to Tazeer, a discretionary punishment.

59. It will be gathered that in the conviction of Petumber Bose I concur, and that in the conviction of Joykissen Mookerjee I do not concur.

60. Owing to this difference of opinion with respect to the guilt of one of the prisoners, a reference to the Nizamut Adawlut becomes necessary.

61. I convict the prisoner Petumber Bose of the crime of fraudulently attempting to give effect to a pottah, knowing the same to be a false and fabricated one, and sentence him to be imprisoned for seven years with labour in irons, suspending the issue of the warrant.

62. Having found that the pottah to Petumber Bose is a forgery, it follows that the four* witnesses who have deposed that they attested its execution, and the seven † other witnesses who have deposed

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* Bhogoban Mundul, Harradun Mitter, Madoo Ghose, son of Ramdeb Ghose, Kisto Ghose, son of Sothrooghon Ghose.

† Raghub Mundul, Issur Mundul, Kisto Gomastah, Kalachand Ghose, Tarruck Ghose, Rajkissore Mundul, Poran Ghose.

that they were present at its execution, have committed perjury ; but as the final decision now rests with the Nizamut Adawlut, I will leave it to that Court to deal with these witnesses, merely calling upon them to give security for their appearance when called for.

63. Some applications made on behalf of the prosecution to summon witnesses not entered in the Calendar, were opposed on behalf of the prisoners, witnesses who had been examined before the Joint Magistrate were not objected to. I also summoned some of the attesting witnesses of the pottah to the prosecutor, considering that their evidence was material, and could not take the prisoners by surprise.

64. I consider that the recusancy and contempt of Shibnauth Roy, a Hooghly vakeel, whose testimony appeared to be material to the prosecution, and of Moheschunder Chuckerbutty, a Serampore Mooktear, whose testimony appeared to be material to the prisoners, ought not to pass unnoticed.

I have, &c.,

(Sd.) J. E. S. LILLIE,

Addl. Sessions Judge.

HOOGHLY,
The 6th May 1861.

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